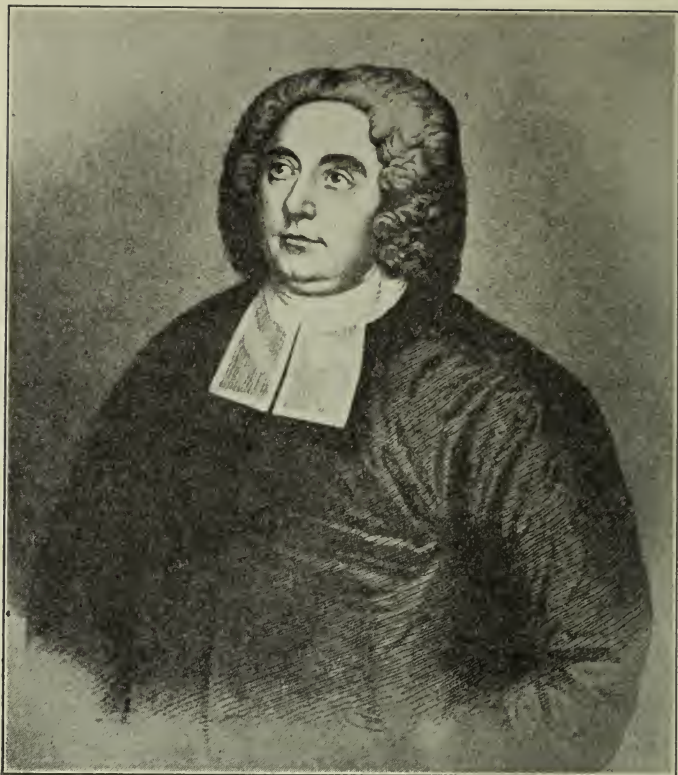


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### BISHOP BERKELEY

“Westward the course of empire takes its way  
The four first acts already past,  
A fifth shall close the drama with the day:  
Time’s noblest offspring is the last”

George Berkeley, Bishop of Cloyne, a distinguished English philosopher and writer, after whom Berkeley, California, is named, was born at Dysert Castle, near Thomastown, Ireland, March 12, 1685. Educated in Trinity College, Dublin, he was appointed an Episcopal prelate, and devoted himself to literature and to philanthropic efforts to establish in America a college for the education and conversion of the Indians to Christianity. He lived nearly four years in Rhode Island, respected, esteemed and beloved by the people of early New England. The British government neglected to furnish the promised funds for the college, and, having exhausted much of his own fortune in his benevolent design, Bishop Berkeley was compelled to return to his native land. So powerfully impressed had he become with the great future of the American colonies that he wrote the famous poem, “Destiny of America,” the concluding stanza of which is quoted above. Alexander Pope, his most intimate friend, declared he was “possessed of every virtue.” He died January 14, 1753, at Oxford, England.

CHARTER  
of the  
City of Berkeley

PREPARED AND PROPOSED BY THE  
BOARD OF FREEHOLDERS


*Elected November 21, 1908, in Pursuance of the Provisions of  
Section 8, Article XI of the Constitution of the  
State of California.*

*Ratified by the qualified electors of the Town of Berkeley at a  
special municipal election held on January 30, 1909.*

*Subsequently presented to the Legislature  
of the State of California and  
thereafter approved.*

*In Effect July 1st  
1909*

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1909

CHARTER  
OF THE  
**City of Berkeley**

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ARTICLE I.

NAME AND RIGHTS OF THE CITY

**Name of the City.**

Sec. 1. The municipal corporation now existing and known as the Town of Berkeley shall remain and continue a body politic and corporate in name and in fact, by the name of the City of Berkeley, and by such name shall have perpetual succession.

**Rights and Liabilities.**

Sec. 2. The City of Berkeley shall remain vested with and continue to have, hold and enjoy all property, rights of property and rights of action of every nature and description now pertaining to this municipality, and is hereby declared to be the successor of the same. It shall be subject to all the liabilities that now exist against this municipality.

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## ARTICLE II.

## BOUNDARIES

Sec. 3. The boundaries of the City of Berkeley shall be as follows:

Beginning at a point of intersection of the boundary line between Alameda County and Contra Costa County, California, with the eastern line of plot number eighty-three (83) as said plot is shown on Kellersberger's map of the subdivision of the Rancho of Vincente and Domingo Peralta, of record in the office of the County Recorder of Alameda County; thence southerly along the eastern line of said plot eighty-three (83) and plots eighty-two (82) and eighty (80) and along the prolongation of said eastern line of said plot eighty (80) southerly across plots seventy-eight (78) and seventy-seven (77) and along the line dividing plots seventy-four (74) and seventy-five (75), all of said plots being portions of the subdivision of said Rancho of Vincente and Domingo Peralta, to a point one hundred and fifty (150) feet southerly from the northeast corner of said plot seventy-five (75) of said Kellersberger's subdivision of said Rancho of Vincente and Domingo Peralta, and one hundred (100) feet southerly from the intersection of said line of said plot seventy-five (75) with the southern line of Russell Street as located by survey, a map of which is recorded in the office of the County Recorder of Alameda County, California, on page thirty-nine (39) of Book Nineteen (19) of maps, said point on said southern line of said Russell street being identical with the southern line of Public Road No. 3093 of Alameda County—commonly called the tunnel road—at its point of beginning; thence easterly and southeasterly along a line one hundred (100) feet distant from and parallel with the said southern line of said County Road No. 3093 to a point six hundred and sixty (660) feet distant southerly from and at right angles to the northern line of plot seventy-four (74) as per Kellersberger's subdivision of said Rancho of Vincente and Domingo Peralta; thence easterly and parallel with said northern line of said plot seventy-



four (74) to the eastern line thereof; thence southerly along the eastern boundary of said plot seventy-four (74) to the southeast corner thereof; thence westerly along the southern boundary of plots seventy-four (74) and seventy-six (76) to the Rancho Vincente and Domingo Peralta and said line produced westerly to Claremont Avenue; thence westerly across Claremont Avenue to the point of intersection of the western line of said Claremont Avenue with the southern line of the Colby Tract as indicated on map of same, recorded on Page 76 of Map Book, No. 19, in the office of the County Recorder of Alameda County; thence westerly along the southern line of the Colby Tract to the eastern line of College Avenue; thence westerly, crossing College Avenue at right angles to same, to a point on the eastern boundary of the City of Oakland one hundred and twenty-five (125) feet westerly from the western line of College Avenue; thence northerly and parallel to College Avenue to a point twenty and seven-tenths (20.7) feet at right angles southerly from the southern line of Woolsey Street in the "Fairview Park"; thence westerly in a straight line to a point ninety-seven and fifty-hundredths (97.50) feet at right angles southerly from the southerly line of Woolsey Street in the Newbury Tract, Berkeley, Cal., said point being on the prolongation in a straight line northerly of the eastern boundary of the Lorin Villa Tract; thence southerly along said prolongation of said eastern line of said Lorin Villa Tract, and along the eastern line of said Lorin Villa Tract and said eastern line of said Lorin Villa Tract produced in a straight line southerly to a point one hundred and thirty-five (135) feet southerly from the southern line of Alcatraz Avenue; thence westerly and parallel with the said southern line of Alcatraz Avenue to the line dividing plots numbers forty-six (46) and fifty-two (52) of Kellersberger's subdivision of the Rancho of Vincente and Domingo Peralta; thence southerly along the said last line to a point on said line one hundred and thirty-five (135) feet southerly from the southern line of Todd Street, as shown on map of Paradise Park; thence westerly and

parallel with the southern line of Todd Street to a point one hundred (100) feet westerly from the western line of Occidental Street, as shown on said map of Paradise Park (said Occidental Street being that street now known as California Street); thence northerly and parallel with said California Street to a point one hundred (100) feet southerly from the southern line of Alcatraz Avenue; thence westerly and parallel with said southern line of Alcatraz Avenue to a point one hundred and sixty (160) feet westerly from the western line of Idaho Street, as shown on map of Herzog Tract; thence northerly and parallel with the said western line of said Idaho Street, as shown on maps of the Herzog Tract and of the Rock Island Tract, to a point one hundred (100) feet southerly from the southern line of Blackstone Street, as shown on map of the Rock Island Tract; thence westerly and parallel with the southern line of said Blackstone Street to a point one hundred (100) feet westerly from the western line of Mabel Street as shown on map of the Carrison Tract, if said western line of said Mabel Street as located east of said Carrison Tract were extended in a direct line southerly; thence northerly, and parallel with the said western line of said Mabel Street and the extension thereof southerly, to a point one hundred (100) feet southerly from the southerly line of Haskell Street as shown on map of the Carrison Tract; thence westerly and parallel with the said southern line of Haskell Street to the eastern line of San Pablo Avenue; thence northerly along the said eastern line of said San Pablo Avenue, ninety-five (95) feet; thence westerly across San Pablo Avenue to a point on the westerly line thereof distant one hundred and ten (110) feet northerly from the northern line of Union Street, as said Union Street is shown on map of the Villa Homestead Association; thence westerly and parallel with the said northern line of said Union Street and parallel with the extension of said line of said Union Street to the western boundary of Alameda County; thence northerly and along the said western boundary of Alameda County to a point from which a line drawn easterly at right angles to the



western line of First Street, in Tract "B" of the lands of the Berkeley Land and Town Improvement Association would intersect said western line of said First Street at Codornices Creek; thence easterly in a straight line to the point of intersection of the western line of said First Street with Codornices Creek; thence easterly along said creek to the corner common to Lots 186 and 187 of Peralta Park, as shown on the map of the Resubdivision of Peralta Park, filed August 29th, 1893, on page 4 of Map Book No. 15, in the office of the County Recorder of Alameda County; thence northerly along the line dividing Lots numbers 165 to 176 inclusive and numbers 178 to 186 inclusive on the east, and Lots numbers 187 to 204 inclusive on the west to a point on the southern line of Lot No. 162, all of said lots being of said resubdivision of Peralta Park; thence westerly along the northern boundary line of Lot 204 to the corner common to Lots 161 and 162, thence northerly along the line dividing said Lots 161 and 162 as shown on said map of Resubdivision of Peralta Park to the southern line of Posen Avenue; thence northerly, crossing Posen Avenue to a point on the northern line of same at the corner common to Lots 116 and 117 of said Resubdivision of Peralta Park; thence northerly along the line dividing Lots 117, 107 and 94 on the west from Lots 116, 108 and 93 on the east to the corner common to said Lots 93 and 94, on the northern boundary of said Peralta Park; thence easterly along the northern line of Peralta Park to the southeasterly corner of Lot Number 1 in Block Number 16 as surveyed in "Northbrae, Berkeley, California," a map of which was filed in the office of the Recorder of Alameda County on April 8th, 1907, on page 65 of Map Book No. 22; thence northeasterly in a straight line to a point on the northwesterly line of Monterey Avenue as per map of "Northbrae," where said northwesterly line of Monterey Avenue intersects the western line of that certain piece or parcel of land conveyed by George Sterling and Carrie R. Sterling to the Berkeley Development Company by deed dated October 13th, 1906, and recorded at page 92 in book of Deeds

Number 1243; thence north 9 degrees 45 minutes west along the western line of said last named piece or parcel of land twenty-five hundred and fifty-eight (2558) feet, more or less, to the northwesterly corner of said piece or parcel of land; thence north 80 degrees 15 minutes east along the northerly line of said last named piece or parcel of land twenty-nine hundred and nineteen and 89-100 (2919.89) feet to a point in the center line of County Road Number 4398, said County Road being also commonly known as Spruce Street, and designated as "Spruce Street" on map entitled "North Cragmont, Berkeley, Cal.," filed in the office of the County Recorder of Alameda County on April 20th, 1908, on page 84 of Map Book Number 23; thence southerly and following the center line of said County Road No. 4398 to its intersection with "Sawyer's partition Line"; thence north 60 degrees 30 minutes east along said "Sawyer's partition Line," said line being identical with the northern line of "Tuohys Second Addition," to the corner common to plots "Q" and "R" as shown on map entitled "Map of the Undivided Mountain and Hill Land of Vincente and Domingo Peralta Rancho as partitioned by a decree of the Third District Court, March 2nd, 1875," filed in the office of the County Recorder of Alameda County, October 6th, 1875, on page 30 of Map Book Number 19; thence south 5 degrees east along said line dividing said plots "Q" and "R" eleven hundred and sixteen and 72-100 (1116.72) feet to the northern line of Berkeley, as per description in Charter adopted March 5th, 1895; thence easterly along said northern line of Berkeley as per charter adopted March 5th, 1895, said line being identical with the northern lines of plots eighty-four (84) and eighty-three (83) as per Kellersberger's map of the subdivision of the Rancho Vincente and Domingo Peralta, of record in the office of the County Recorder of Alameda County, to a point on the line dividing Alameda County and Contra Costa County, said point being the most northern point on the boundary of said plot 83; thence southerly and southeasterly along said

line between said Alameda and Contra Costa counties to the point of beginning.

### ARTICLE III. ELECTIONS

#### **General and Special Municipal Elections.**

Sec. 4. A municipal election shall be held in the City on the first Saturday in May in the year 1909, and on the first Saturday in April in 1911 and on the first Saturday in April in every second year thereafter, and shall be known as the general municipal election. A second election shall be held, when necessary, as provided in subdivision 22 of section 5, on the third Saturday after said general municipal election, and shall be known as the second general municipal election.

All other municipal elections that may be held by authority of this Charter or of general laws shall be known as special municipal elections.

#### **Nomination and election of city officers.**

Sec. 5. (1) The mode of nomination and election of all elective officers of the City to be voted for at any municipal election shall be as follows and not otherwise:

#### **Condition of Candidacy.**

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

#### **Form of nomination petition.**

(3) The petition of nomination shall consist of not less than twenty-five individual certificates, which shall read substantially as follows:

#### PETITION OF NOMINATION.

##### **Individual Certificate.**

State of California, }  
County of Alameda, } ss.  
City of Berkeley, }      Prec. No. ....  
I, the undersigned, certify that I do hereby join in a

petition for the nomination of.....whose residence is at No.....Street, Berkeley, for the office of .....to be voted for at the municipal election to be held in the City of Berkeley on the.....day of .....192....., and I further certify that I am a qualified elector and am not at this time a signer of any other petition nominating any other candidate for the above named office, or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No.....Street, Berkeley, and that my occupation is .....

.....  
(Signed).....

State of California, }  
County of Alameda, } ss.  
City of Berkeley, }

.....being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) .....

Subscribed and sworn to before me this.....day of .....19.....

.....  
(Notary Public or Verification Deputy.)

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to.....at No.....Street, Berkeley, Cal.

**Forms to be supplied by the City Clerk.**

(4) It shall be the duty of the City Clerk to furnish

upon application a reasonable number of forms of individual certificates of the above character.

### **Requirements of certificate.**

(5) Each certificate must be a separate paper. All certificates must be of a uniform size as determined by the City Clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, nor, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true before a notary public or a verification deputy, as provided for in this section. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

### **Verification deputies.**

(6) Verification deputies, under this section, must be qualified electors of the City and shall be appointed by the City Clerk upon application in writing signed by not less than five qualified electors of the City. The application shall set forth that the signers thereto desire to procure the necessary signatures of electors for the nomination of candidates for municipal office at an election therein specified, and that the applicants desire the person or persons whose names and addresses are given, appointed as verification deputies, who shall upon appointment be authorized and empowered to take the oath of verification of the signers of petitions of nomination. Such verification deputies need not use a seal, and shall not have power to take oaths for any other purpose whatsoever, and their appointments shall continue only until all petitions of



nomination, under this section, shall have been filed by the City Clerk.

**Date of presenting petition.**

(7) A petition of nomination consisting of not less than twenty-five individual certificates for any one candidate, may be presented to the City Clerk not earlier than forty-five days nor later than thirty days before the election. The Clerk shall endorse thereon the date upon which the petition was presented to him.

**Examination of petitions by City Clerk.**

(8) When a petition of nomination is presented for filing to the City Clerk, he shall forthwith examine the same, and ascertain whether it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition cannot be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the Clerk as in the first instance. The Clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the Council shall provide extra help to enable the Clerk to perform satisfactorily and promptly the duties imposed by this section.

**Withdrawal of signature.**

(9) Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the City Clerk a verified revocation of his signature before the filing of the petition by the Clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

**Withdrawal of candidate.**

(10) Any person whose name has been presented under this section as a candidate may, not later than twenty-five days before the day of election, cause his name to be withdrawn from nomination by filing with the City Clerk a request therefor in writing, and no name so withdrawn



shall be printed upon the ballot. If upon such withdrawal the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty days prior to such election.

#### **Filing of petitions.**

(11) If either the original or the amended petition of nomination be found sufficiently signed as hereinbefore provided, the Clerk shall file the same twenty-five days before the date of the election. When a petition of nomination shall have been filed by the Clerk it shall not be withdrawn nor added to and no signature shall be revoked thereafter.

#### **Preservation of petitions.**

(12) The City Clerk shall preserve in his office for a period of two years all petitions of nominations and all certificates belonging thereto filed under this section.

#### **Election proclamation.**

(13) Immediately after such petitions are filed, the Clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty days before the election certify such list as being the list of candidates nominated as required by the Charter of Berkeley, and the Council shall cause said certified list of names and the offices to be filled, designating whether for a full term or unexpired term, to be published in the proclamation calling the election at least ten successive days before the election in not more than two daily newspapers of general circulation published in the City of Berkeley. Said proclamation shall conform in all respects to the general State law governing the conduct of municipal elections, now or hereafter in force, except as above required.

#### **Form of ballots.**

(14) The City Clerk shall cause the ballots to be printed and bound and numbered as provided for by State law except as otherwise required in this Charter. The ballots shall contain the list of names and the respective

offices, as published in the proclamation and shall be in substantially the following form:

**General (or special) municipal election, City of Berkeley.**

(Inserting date thereof.)

INSTRUCTIONS TO VOTERS: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the Inspector of Election, and obtain another.

**Requirements of Ballot.**

(15) All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right hand side for charter amendments or other questions to be voted upon at the municipal elections, as provided for under this Charter. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

**Every nominee to be on ballot.**

(16) The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided, shall be omitted from the ballot.

**Arrangement of offices on ballot.**

(17) The offices to be filled shall be arranged in separate columns in the following order:

“For Mayor (if any) vote for one.”

“For Auditor (if any) vote for one.”

“For Councilman (if any) vote for (giving number).”

“For School Directors (if any) vote for (giving number).”

**Space for voting cross.**

(18) Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

**Blank space for additional candidates.**

(19) Half-inch spaces shall be left below the printed names of candidates for each office equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

**Sample Ballots.**

(20) The Clerk shall cause to be printed sample ballots identical with the ballot to be used at the election and shall furnish copies of the same on application to registered voters at his office at least five days before the date fixed for such election, and shall mail one such ballot to each voter entitled to vote at such election, so that all of said sample ballots shall have been mailed at least three whole days before said election.

**Vote necessary for election.**

(21) In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office shall be declared elected; in case there are two or more persons to be elected to an office, as that of Councilman or School Director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected; provided, however, that no person shall be declared elected to any office at such first election unless the number of votes received by him shall be greater than one-half the number of ballots cast at such election.

**Second Election.**

(22) If at any election held as above provided there be any office to which the required number of persons was not elected, then as to such office the said first election shall be considered to have been a primary election for

the nomination of candidates, and a second election shall be held to fill said office. The candidates not elected at such first election, equal in number to twice the number to be elected to any given office, or less if so there be, who receive the highest number of votes for the respective offices at such first election, shall be the only candidates at such second election, provided, that if there be any person who, under the provisions of this subdivision, would have been entitled to become a candidate for any office except for the fact that some other candidate received an equal number of votes therefor, then all such persons receiving such equal number of votes shall likewise become candidates for such office.

The candidates equal in number to the persons to be elected who shall receive the highest number of votes at such second election shall be declared elected to such office.

#### **Date of second election.**

(23) The said second election, if necessary to be held, shall be held three weeks after the first election.

#### **Rules governing second election.**

(24) All the provisions and conditions above set forth as to the conduct of an election, so far as they may be applicable, shall govern the second election, except that notice of election need be published twice only, and provided also that the same precincts and polling places shall, if possible, be used.

#### **Failure of person elected to qualify.**

(25) If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

#### **Informalities in election.**

(26) No informalities in conducting municipal elections shall invalidate the same, if they have been conducted fairly and in substantial conformity to the requirements of this Charter.

**General election regulations.**

Sec. 6. (1) The provisions of the State Law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of elections, so far as they may be applicable, shall govern all municipal elections, provided that the Council shall meet as a canvassing board and duly canvass the election returns within four days after any municipal election.

**Voting machines.**

(2) In case voting machines shall be used at municipal elections, the Council shall have power, by ordinance, to modify the provisions of Section 5 so far as may be necessary to adapt them to the use of voting machines.

**ARTICLE IV.****RECALL OF ELECTIVE OFFICERS****Applies to all elective officers.**

Sec. 7. (1) Every incumbent of an elective office, whether elected by popular vote or appointed to fill a vacancy, is subject to recall by the voters of the city. The procedure to effect such removal from office shall be as follows:

**Petition for recall.**

(2) A petition signed by qualified electors equal in number to twenty per centum of the entire vote cast for Mayor at the last preceding general municipal election at which a Mayor was elected, demanding an election of a successor of the officer sought to be removed, shall be addressed to the Council and presented to the City Clerk. The petition may request such election to be held at a special municipal election or at the next general municipal election. The petition must contain a statement of the reasons for the demand.

**Provisions of Section 5 apply.**

(3) The provisions of Section 5 respecting the forms and conditions of the petition and the mode of verification



and certification and filing shall be substantially followed, with such modifications as the nature of the case requires.

**Election under recall petition.**

(4) If the officer sought to be removed shall not resign within five days after the petition is filed by the City Clerk, and if the petition requests a special election, the Council shall cause a special election to be held within forty-five days to determine whether the people will recall said officer, or, if a general municipal election is to occur within sixty days, the Council may in its discretion postpone the holding of such election to such general municipal election.

**Grounds of recall. Officer's justification.**

(5) In the published call for the election there shall be printed in not more than two hundred words the reasons for demanding the recall of the officer as set forth in the Recall petition, and in not more than two hundred words the officer may justify his course in office.

**Candidates. Election.**

(6) The officer sought to be removed shall be deemed a candidate and, unless he resigns, his name shall be printed on the ballot. The nomination of other candidates and the election shall be in accordance with the provisions of Section 5.

**Incumbent removed.**

(7) The officer sought to be removed shall, if he do not resign, continue to perform the duties of his office until the election, and, if he fail of election, he shall be deemed removed from office.

**No recall petition for first three months.**

(8) No recall petition shall be filed against any officer until he has actually held his office for at least three months.

**Incapacity of recalled official.**

(9) No person who has been recalled from an elective office, or who has resigned from such office while recall proceedings were pending against him, shall be appointed



to any office within one year after such recall or resignation.

**Further regulations.**

(10) The Council may by ordinance make such further regulations as may be necessary to carry out the provisions of this section, and to adapt the provisions of Section 5 thereto.

ARTICLE V.  
ELECTIVE OFFICERS

**The elective officers.**

Sec. 8. The elective officers of the City shall be a Mayor, an Auditor, four Councilmen, and four School Directors.

The Council shall consist of the Mayor and four Councilmen, each of whom, including the Mayor, shall have the right to vote on all questions coming before the Council.

The Board of Education shall consist of four School Directors and the Councilman appointed to be Commissioner of Finance and Revenue, each of whom, including said Commissioner, shall have the right to vote on all questions coming before the Board.

**Elected at large.**

Sec. 9. The Mayor, Auditor, Councilmen and School Directors shall be elected at the general municipal election on a general ticket from the City at large.

**Eligibility of Mayor, Auditor, and Councilmen.**

Sec. 10. To be eligible for the office of Mayor, Auditor \*or Councilman, a person, must be a citizen of the United States and a qualified elector of the State of California and of the City of Berkeley.

**Eligibility of School Directors.**

Sec. 11. To be eligible for the office of School Director,

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\*Erroneously specifies "Auditor of Councilman" in Act approving Charter.

a person must be a citizen of the United States of the age of twenty-one years and a resident of the City of Berkeley.

**Vacancy in office of Mayor, Auditor or Councilman.**

Sec. 12. If a vacancy shall occur in the office of Mayor, Auditor or Councilman, the Council shall appoint a person to fill such vacancy. If at any municipal election held under subdivision 22 of Section 5 of this Charter a Mayor, Auditor or the required number of Councilmen be not elected by reason of a tie vote among any of the candidates therefor, then the Council, after the qualification of the persons, if any elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office as in the case of a vacancy therein. In each case the person so appointed shall hold office, subject to the provisions of the Recall until the next general municipal election.

**Vacancy in office of School Director.**

Sec. 13. If a vacancy shall occur in the office of School Director, the Board of Education shall appoint a person to fill such vacancy. If at any municipal election held under subdivision 22 of Section 5 of this Charter a School Director be not elected by reason of a tie vote among any of the candidates therefor, then the Board of Education after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote, to fill such office as in case of a vacancy therein. In each case a person so appointed shall hold office, subject to the provisions of the Recall, until the next general municipal election.

**Mayor's and Auditor's term of office.**

Sec. 14. The Mayor and Auditor shall each hold office for a term of two years from and after the first day of July after his election, and until his successor is elected and qualified.

**Councilmen's term of office.**

Sec. 15. The Councilmen shall hold office for a term of four years from and after the first day of July after their election and until their successors are elected and quali-

fied. Provided, that the Councilmen first elected under this Charter shall, at their first meeting, so classify themselves by lot that two of them shall hold office for two years and two of them for four years.

At each general municipal election after the first under this Charter, there shall be elected two Councilmen.

#### **School Director's term of office.**

Sec. 16. The School Directors shall hold office for a term of four years from and after the first day of July after their election and until their successors are elected and qualified. Provided, that the School Directors first elected under this Charter shall, at their first meeting, so classify themselves by lot that two of them shall hold office for two years and two of them for four years.

At each general municipal election after the first under this Charter there shall be elected two School Directors.

#### **Official bonds.**

Sec. 17. The Mayor, Auditor, each Councilman and each School Director shall, before entering upon the duties of his office, give and execute to the City a bond with a surety company as sole surety, the Mayor and Auditor each, in the penal sum of \$10,000, each Councilman in the penal sum of \$5,000, and each School Director in the penal sum of \$2,500.

Every bond shall contain the condition that the principal will well, truly, honestly and faithfully perform the duties of his office. The bonds of the Mayor must be approved by the Council and the bonds of the Auditor and the several Councilmen and School Directors must be approved by the Mayor.

The Council shall fix the amount of bonds and the methods of their approval to be required of appointive officers.

The approval of the official bonds must be endorsed thereon and signed by the officer or officers approving the same. All bonds, when approved, shall be filed with the City Clerk. All the provisions of any law of this State, relating

to official bonds, not inconsistent with this Charter, shall be complied with.

**Oath of office.**

Sec. 18. Every officer of the City, before entering upon the duties of his office, shall take the oath of office as provided for in the Constitution of this State, and shall file the same with the City Clerk.

**Salaries.**

Sec. 19. The Mayor shall receive an annual salary of \$2,400, payable in equal monthly installments.

The Auditor shall receive an annual salary of \$1,800, payable in equal monthly installments.

Each Councilman shall receive an annual salary of \$1,800, payable in equal monthly installments.

Each School Director shall receive five dollars for each regular meeting of the Board of Education which he shall attend, provided that no School Director shall receive more than fifteen dollars in any one month, and provided further that the salary received by the Commissioner of Finance and Revenue, as Councilman, shall be full compensation for all services performed by him as Councilman and as School Director.

All salaries provided for in this section shall be paid out of the General Fund of the City.

As amended in 1913. (Statutes 1913, Chap. 6, p. 1502.)

**Administering oaths. Subpoenas.**

Sec. 20. Every elective officer, every chief official and every member of any board or commission provided for in this Charter shall have the power to administer oaths and affirmations, and every such officer, board or commission shall have the power to issue subpoenas, to compel by subpoena the production of books, papers and documents, and to take and hear testimony concerning any matter or thing pending before such officer, board or commission. If any person so subpoenaed neglect or refuse to appear, or to produce any book, paper or document as required by such subpoena, or shall refuse to testify before any such officer, board or commission or to answer any question

which any officer, or a majority of such board or commission shall decide to be proper and pertinent, he shall be deemed in contempt, and any such officer, board or commission shall have power to take the proceedings in that behalf provided by the general laws of this State. The Chief of Police must, on request of such officer, or of any member of such board or commission, detail a police officer or police officers to serve such subpoena.

## ARTICLE VI.

### THE MAYOR

#### **The chief executive.**

Sec. 21. The Mayor shall be the chief executive officer of the City and shall see that all the ordinances thereof are duly enforced. He shall be charged with the general oversight of the several departments of the municipal government. He shall see that all contracts made with the City are faithfully performed.

#### **Mayor pro tempore.**

Sec. 22. During the temporary absence or disability of the Mayor, the Vice-President of the Council shall act as Mayor pro tempore. In case of the temporary absence or disability of both the Mayor and Vice-President the Council shall elect one of its members to be Mayor pro tempore. In case of vacancy in the office of the Mayor, the Vice-President of the Council shall act as Mayor until such vacancy can be filled as provided in this Charter.

#### **Mayor's reports.**

Sec. 23. The Mayor shall annually and from time to time give the Council information relative to the affairs of the City and recommend to its consideration such matters as he may deem expedient.

#### **Mayor to have City's books examined.**

Sec. 24. The Mayor shall employ, for a stipulated compensation, at the beginning of each fiscal year, a certified public accountant, who shall examine, at least twice each year, the books, records and reports of the Auditor and of all officers and employees who receive or disburse City



moneys, and the books, records and reports of such other officers and departments as the Mayor may direct and make triplicate reports thereof, and present one each to the Mayor and Auditor, and file one with the City Clerk. Such accountant shall have unlimited privilege of investigation, to examine under oath or otherwise all officers, clerks and employees of the City, and every such officer, clerk and employee shall give all required assistance and information to such accountant, and submit to him for examination such books and papers of his office as may be requested, and failure to do so shall be deemed and held to be a forfeiture and abandonment of his office. The Council shall provide for the payment of the services of such accountant.

#### **Supervision of public utility companies.**

Sec. 25. The Mayor shall be charged with the general supervision of all public utility companies in so far as they are subject to municipal control; he shall keep himself fully informed as to their compliance in all respects with the law, and he shall see that all franchises granted by the City are faithfully observed.

The Mayor shall cause to be instituted such actions or proceedings as may be necessary to prosecute public utility companies for violations of law, and revoke, cancel or annul all franchises that may have been granted by the City to any person, firm or corporation which have become forfeitable in whole or in part or which for any reason are illegal and void and not binding upon the City. The City Attorney, on demand of the Mayor, must institute and prosecute the necessary actions to enforce the provisions of this section.

#### **Powers and duties prescribed by ordinance.**

Sec. 26. The Mayor shall exercise such other powers and perform such other duties as may be prescribed by law and ordinance.



## ARTICLE VII.

## EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS

**The four municipal departments.**

Sec. 27. The executive and administrative powers, authority and duties of the City, not otherwise provided for, shall be distributed among and assigned to four departments, as follows:

1. Department of Finance and Revenue.
2. Department of Public Health and Safety.
3. Department of Public Works.
4. Department of Public Supplies.

**Council to assign duties to the departments.**

Sec. 28. The Council shall determine and assign the duties of the several departments, subject to the provisions of the preceding section; shall prescribe the powers and duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments, and may make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the City.

**The four Commissioners.**

Sec. 29. The Council at its first regular meeting after the election of its members, shall designate by majority vote one Councilman to be Commissioner of Finance and Revenue, one to be Commissioner of Public Health and Safety, one to be Commissioner of Public Works and one to be Commissioner of Public Supplies. If the Council is unable to agree, the Mayor shall have authority to make such designation. The Council may change such designation by ordinance or by resolution published for two days, whenever it determines that the public service will be benefited thereby.

**The chief officials.**

Sec. 30. The chief officials of the City shall be City Clerk, Assessor, Treasurer, Collector, Attorney, Engineer, Chief of Police, Fire Chief, Street Superintendent, Health Officer and five Library Trustees. They shall be appointed

and may be removed by a majority vote of the Council. The Council, at any time when in its judgment the interests of the City so demand, may consolidate and place in charge of one such officer the functions and duties of two or more such officers. The Council shall by ordinance prescribe the duties of all the chief officials.

The Council shall at the first regular meeting after the election of its members, or as soon thereafter as practicable, proceed to the appointment of the chief officials of the City and the determination of their duties as provided in this section.

### **Subordinate officers and employees.**

Sec. 31. The Council shall have power by ordinance to create and discontinue offices, deputyships, assistantships and employments other than those prescribed in this Charter, provide the modes of filling them, to prescribe the duties pertaining thereto, according to its judgment of the needs of the City, and to determine the mode of removing any such officer, deputy, assistant or employee, except as otherwise provided in this Charter.

### **Compensation of officers and employees.**

Sec. 32. The compensation of all City officers provided for by Section 30 of this Charter, except Library Trustees, who shall receive no remuneration, shall be by salary to be fixed by the Council. The council shall also fix the compensation of all other officers and employees of the City, except as in this Charter otherwise provided. No officer or employee shall be allowed any fees, perquisites, emoluments, rewards or compensation, aside from the salary or compensation as fixed by the Council, but all fees received by him in connection with his official duties shall be paid by him into the City Treasury.

### **Reports of departments.**

Sec. 33. Each department and commission shall annually on such date as may be fixed by the Council, render to the Mayor a full report of all the operations of such department or commission for the year.

**Reports to be published.**

Sec. 34. The Council shall provide for the publication of the annual reports of the Mayor and of the several departments and commissions.

**Councilmen to hold no other office.**

Sec. 35. No member of the Council, except the Commissioner of Finance and Revenue, who shall be ex-officio member of the Board of Education, shall hold any other municipal office or hold any office or employment the compensation of which is paid out of the municipal moneys; or be elected or appointed to any office created or the compensation of which is increased by the Council while he was a member thereof, until one year after the expiration of the term for which he was elected.

**Officers not to be interested in contracts or franchises.**

Sec. 36. No officer or employee shall be directly or indirectly interested in any contract, work or business of the City, or in the sale of any article, the expense, price or consideration of which is paid for from the treasury or by assessment levied by any act or ordinance; nor in the purchase or lease of any real estate or other property belonging to the City or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the City. No officer shall be in the employ of any public service corporation in the City or of any person having any contract with the City or of any grantee of a franchise granted by the City.

Any contract or agreement made in contravention of this section shall be void.

Any violation of the provisions of this section shall be deemed a misdemeanor.

The Council shall enforce the provisions of this section by appropriate legislation.

**Political and religious tests.**

Sec. 37. No appointment to position under the City government shall be made or be withheld by reason of any religious or political opinions or affiliations or political services, and no appointment to or selection for or re-

moval from any office or employment, and no transfer, promotion, reduction, reward or punishment shall be in any manner effected by such opinions, affiliations or services.

## ARTICLE VIII.

### THE COUNCIL

#### **The Council, the governing body.**

Sec. 38. The Council shall be the governing body of the municipality. It shall exercise the corporate powers of the City, and, subject to the express limitations of this Charter, shall be vested with all powers of legislation in municipal affairs adequate to a complete system of local government consistent with the Constitution of the State.

#### **President and Vice-President.**

Sec. 39. The Mayor shall be President of the Council and shall preside at its meetings when present. The Council shall elect one of its members to be Vice-President.

#### **Meetings of Council.**

Sec. 40. The Council shall provide for the time and place of holding its meetings and the manner in which its special meetings may be called.

#### **Meetings to be public.**

Sec. 41. All legislative sessions of the Council, whether regular or special, shall be open to the public.

#### **Quorum.**

Sec. 42. A majority of the members of the Council shall constitute a quorum for the transaction of business.

#### **Rules of proceeding.**

Sec. 43. The Council shall establish rules for its proceedings.

#### **Ordinances and resolutions.**

Sec. 44. (1) The Council shall act only by ordinance or resolution.

#### **Ayes and noes.**

(2) The ayes and noes shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of the proceedings of the Council.

**Majority vote of Council.**

(3) No ordinance or resolution shall be passed or become effective without receiving the affirmative votes of at least three members of the Council.

**Subject and title.**

(4) Every ordinance or resolution, except an ordinance making appropriations, shall be confined to one subject, which shall be clearly expressed in the title, and every ordinance making appropriations shall be confined to the subject of appropriations. If any subject shall be embraced in an ordinance which shall not be expressed in its title, such ordinance shall be void only as to so much thereof as shall not be expressed in its title.

**Enacting clause of ordinance.**

(5) The enacting clause of all ordinances passed by the Council shall be in these words: "Be it ordained by the Council of the City of Berkeley as follows:"

**Requirements of an ordinance.**

(6) To constitute an ordinance a bill must before final action thereon be passed to print and published with the ayes and noes for two days, and, in case of any amendment being made thereto before the final adoption of the ordinance, must in like manner be republished as amended for not less than one day.

**Ordinance required in certain cases.**

(7) No action providing for any specific improvements or the appropriation or expenditure of any public money, except sums less than five hundred dollars; for the appropriation, acquisition, sale or lease of public property; for the levying of any tax or assessment; for the granting of any franchise; for establishing or changing fire limits, or for the imposing of any penalty, shall be taken except by ordinance; provided, that such exceptions be observed as may be called for in cases where the Council takes action in pursuance of a general law of the State.

**Reconsideration.**

(8) When any bill is put upon its final passage and



fails to pass, and a motion is made to reconsider, the vote upon such motion shall not be taken except at a meeting of the Council held not less than one week after the meeting at which such motion was made.

#### **Signing and attesting.**

(9) All resolutions and ordinances shall be signed by the Mayor and attested by the City Clerk.

#### **Revision and amendment.**

(10) No ordinance shall be revised, re-enacted or amended by reference to its title only; but the ordinance to be revised or re-enacted, or the section or sections thereof to be amended, or the new section or sections to be added thereto, shall be set forth and adopted in the method provided in this section for the adoption of ordinances.

#### **Repeal.**

(11) No ordinance nor section thereof shall be repealed except by ordinance adopted in the manner provided in this section.

#### **Ordinances granting franchises.**

(12) No bill for the grant of any franchise shall be put upon its final passage within thirty days after its introduction, and no franchise shall be renewed before one year prior to its expiration.

#### **Record of City ordinances.**

(13) A true and correct copy of all ordinances shall be kept and certified to by the City Clerk in a book marked "City Ordinances." Such record copy, with such certificate, or the original ordinance, shall be prima facie evidence of the contents of the ordinance and of the due passage and publication of the same, and shall be admissible as such in any court or proceeding. Such records shall not be filed in any case, but shall be returned to the custody of the City Clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of an ordinance in the usual way.

#### **Protection of absent commissioner.**

Sec. 45. No final action shall be taken in any manner



concerning the special department of any absent Councilman unless such business has been made a special order of the day by action at a previous meeting of the Council or such action is taken at a regular meeting of the Council.

#### **Publication of Charter and ordinances.**

Sec. 46. The Council, during the first year after its organization under this Charter and from time to time thereafter, shall cause all ordinances at such time in force to be classified under appropriate heads, and, together with or separately from the Charter of the City and such provisions of the Constitution and laws of the State as the Council may deem expedient, to be published in book form.

### **ARTICLE IX.**

#### **POWERS OF THE CITY AND OF THE COUNCIL**

##### **General powers of the City.**

Sec. 47. Without denial or disparagement of other powers held under the constitution and laws of the State, the City of Berkeley shall have the right and power:

##### **Public buildings, works and institutions.**

(1) To acquire by purchase, condemnation or otherwise, and to establish, maintain, equip, own and operate libraries, reading rooms, art galleries, museums, schools, kindergartens, parks, playgrounds, places of recreation, fountains, baths, public toilets, markets, market houses, abattoirs, dispensaries, infirmaries, hospitals, charitable institutions, jails, houses of correction and farm schools, work houses, detention homes, morgues, cemeteries, crematories, garbage collection and garbage disposal and reduction works, street cleaning and sprinkling plants, quarries, wharves, docks, waterways, canals, and all other public buildings, places, works and institutions.

##### **Water, light, heat and power.**

(2) To acquire by purchase, condemnation or otherwise, and to establish, maintain, equip, own and operate waterworks, gas works, electric light, heat and power works, within or without the City, and to supply the City and its inhabitants and also persons, firms and corporations outside the City, with water, gas and electricity.

**Telephone, telegraph and transportation.**

(3) To acquire by purchase, condemnation or otherwise, and to establish, maintain, equip, own and operate telephone and telegraph systems, cable, electric or other railways, ferries and transportation service of any kind.

**Sale of products of public utilities.**

(4) To sell gas, water, electric current and all products of any public utility operated by the City.

**Land for public purposes.**

(5) To acquire by purchase, condemnation or otherwise within or without the City, such lands or other property as may be necessary for the establishment, maintenance and operation of any public utility or to provide for and effectuate any other public purpose; and to sell, convey, encumber and dispose of the same for the common benefit.

**Lease of public utilities.**

(6) To lease to corporations or individuals for the purpose of maintenance and operation any public utility owned by the City.

**Bequests and donations.**

(7) To receive bequests, gifts and donations of all kinds of property, in fee simple, or in trust for charitable and other purposes, and do all acts necessary to carry out the purpose of such bequests, gifts and donations, with power to manage, sell, lease or otherwise dispose of the same in accordance with the terms of the bequest, gift or trust, or absolutely in case such bequest, gift or trust be unconditional.

**Borrowing money, bonds.**

(8) To borrow money for any of the purposes for which the City is authorized to provide and for carrying out any of the powers which the City is authorized to enjoy and exercise and to issue bonds therefor; provided, that in the procedure for the creation and issuance of such bonded indebtedness the general laws of the State of

California in force at the time of such proceedings are taken shall be observed and followed.

### **Special Tax.**

(9) To raise money by a special tax, in addition to the annual tax levy provided in Section 57 of this Charter. To authorize such special tax, the provisions of Section 92 of Article XIII relating to the Initiative, or of Section 94 of Article XIV relating to the Referendum, shall be followed, and the levy of such tax must be approved by at least two-thirds of the qualified electors who vote thereon. At such election the Council may be authorized, in cases where public necessity requires the expenditure of any sum so voted before the next succeeding tax levy, to borrow such sum and provide in the next succeeding tax levy for its repayment with interest at not exceeding five per cent per annum. Or the Council may be authorized to levy a special tax each year for a period of years not exceeding three years in all, for any permanent municipal improvement, and the money so raised may be expended each year after the same is collected and available.

### **Joint ownership of water supply.**

(10) To join with one or more cities incorporated under the Constitution and laws of the State in order to acquire and develop jointly a source or sources of water supply for municipal and domestic purposes and to construct the works necessary for their joint and several purposes and needs and to unite with such cities in bond issues therefor.

### **Sue and defend.**

(11) To sue and defend in all courts and places and in all matters and proceedings.

### **Direct legislation by people.**

Sec. 48. The qualified voters of the City shall have power through the initiative and otherwise, as provided by this Charter and the general laws of the State, to enact appropriate legislation to carry out and enforce any of the

above general powers of the City or any of the specified powers of the Council.

**Powers of the Council enumerated.**

Sec. 49. As the legislative organ of the City, the Council, subject to the provisions and restrictions of this Charter, shall have power:

**Official Seal.**

(1) To provide a corporate seal, with appropriate device, to be affixed to all instruments or writings needing authentication.

**Violation of Charter and ordinances.**

(2) To prescribe fines, forfeitures and penalties for the violation of any provision of this Charter or of any ordinance; but no penalty shall exceed five hundred dollars or six months' imprisonment, or both.

**Nuisances.**

(3) To provide for the summary abatement of any nuisance at the expense of the person or persons creating, causing, committing or maintaining such nuisance.

**Rewards.**

(4) To offer rewards not exceeding two hundred and fifty dollars in any one instance for the apprehension and conviction of any person who may have committed a felony in the City, and to authorize the payment thereof.

**Police and Fire Departments.**

(5) To organize and maintain police and fire departments, erect the necessary buildings and own all implements and apparatus required therefor.

**Police and fire alarm systems.**

(6) To establish and maintain a fire alarm and police telegraph or telephone system, and manage and control the same, and to appoint a superintendent thereof.

**Explosives.**

(7) To regulate or prohibit the manufacture, keeping, storage and use of powder, dynamite, guncotton, nitroglycerine, fireworks and other explosive materials and substances.

**Inflammable materials.**

(8) To regulate the storage of hay, straw, oil and other inflammable and combustible materials.

**Engines and boilers.**

(9) To regulate the use of steam engines, gas engines, steam boilers, and electric motors, and to prohibit their use in such localities as in the judgment of the Council would endanger public safety.

**Fire limits.**

(10) To prescribe fire limits and determine the character and height of buildings that may be erected therein and the nature of the materials to be used in the construction, alteration or repair of such buildings or in the repair or alteration of existing buildings within such fire limits.

**Building regulations.**

(11) To regulate the construction of and the materials\* used in all buildings, chimneys, stacks and other structures; to prevent the erection and maintenance of insecure or unsafe buildings, walls, chimneys, stacks or other structures, and to provide for their summary abatement or destruction; to regulate the materials used in and the method of construction of foundations and foundation walls, the manner of construction and location of drains and sewers, the materials used in wiring buildings or other structures for the use of electricity for lighting, power, heat and other purposes, and materials used for piping buildings or other structures for the purpose of supplying the same with water or gas and the manner of so doing; to prohibit the construction of buildings and structures which do not conform to such regulations.

**Fire escapes.**

(12) To require the owners and lessees of buildings or other structures to place upon them or in them fire

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\*"Material" appears in the original subdivision as published, and "materials" in the Act of the Legislature, as approved and recorded.



escapes and appliances for protection against fire and for the extinguishment of fires.

**Precaution against fires.**

(13) To prevent the construction and to cause the removal of dangerous chimneys, fireplaces, hearths, stoves, stove pipes, ovens, boilers, apparatus and machinery used in any building in the City; to regulate the carrying on of manufactories liable to cause fire; to prevent the depositing of ashes, the accumulation of shavings, rubbish, or any combustible material in unsafe places, and to make provisions to guard against fires.

**Provisions for safety in theatres, halls, etc.**

(14) To regulate the size and construction of the entrances to and exits from all theatres, lecture rooms, halls, schools, churches, and other places for public gathering of every kind and to prevent the placing of seats, chairs, benches or other obstructions in the hallways, aisles or open places therein.

**Provision for safety in streets.**

(15) To regulate the speed of railroad trains, engines and cars passing through the City and the speed of cars of street or interurban railway companies using the public streets of the City, to require railroad companies to station flagmen, place gates or viaducts at all such street crossings as the Council may deem proper, to require street cars and local trains to be provided with fenders or other appliances for the better protection of the public; to prohibit the making up of railroad trains on any of the streets, street crossings or street intersections of the City; to regulate the speed with which persons may ride or drive or propel bicycles, automobiles or other vehicles along or upon any of the streets or highways of the City.

**Improper use of streets.**

(16) To regulate or prohibit the exhibition or carrying of banners, placards, or advertisements, and the distribution of handbills in the street, public grounds or upon the sidewalks; to regulate and prevent the flying of ban-

ners, flags or signs across the streets or from houses; to regulate or prohibit traffic and sales in the streets and public places; to prevent encroachments upon or obstructions to the streets, and to require their removal.

### **Weeds and rubbish on sidewalks.**

(17) To compel the owner or occupant of buildings or grounds to remove dirt, rubbish and weeds from the sidewalk opposite thereto; and in his default to authorize the removal or destruction thereof by some officer of the City at the expense of such owner or occupant, and to make such expense a lien upon such buildings or grounds.

### **Billboards and signs.**

(18) To regulate, license or prohibit the construction and use of billboards and signs.

### **Dogs.**

(19) To regulate and prevent the running at large of dogs, to prevent dog fights in the streets, to provide for the destruction of vicious dogs, and to require the payment of license fees by the owners or persons having possession of dogs, and to impose penalties upon such persons for refusing to pay such license fee.

### **Public pound.**

(20) To prevent or regulate the running at large of any animals, and to establish and maintain a pound and authorize the destruction or other disposition of any animals running at large.

### **Cruelty to animals.**

(21) To prohibit and punish cruelty to animals, and to require the places where they are kept to be maintained in a clean and healthful condition.

### **Preservation of health.**

(22) To make all regulations which may be necessary and expedient for the preservation of health and the suppression of disease; to make regulations to prevent the introduction of contagious, malignant, infectious or other

diseases into the City; to make quarantine laws and regulations; to regulate, control and prevent the entry into the City of persons, baggage, merchandise or other property infected with contagious disease.

**Dangerous and offensive occupations; disagreeable noises.**

(23) To regulate or prohibit the operation of all manufactories, occupations or trades which may be of such a nature as to affect the public health or good order of the City or disturb the public peace, or which may be offensive or dangerous to the inhabitants residing in the vicinity, and to provide for the punishment of all persons violating such regulations and the punishment of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them; to make regulations for the suppression of disagreeable, offensive and injurious noises.

**Inspection of food products.**

(24) To provide for and regulate the inspection by the Health Officer of meats, poultry, fish, game, bread, butter, cheese, lard, eggs, vegetables, breadstuffs, milk and other food products offered for sale in the City, and to provide for the taking and summarily destroying of any such products as are unsound, spoiled, adulterated, or unwholesome, and to regulate and prevent bringing into the City or having or keeping within the City any such unsound, spoiled, adulterated or unwholesome products.

**Dairies.**

(25) To provide for and regulate the inspection of all dairies that offer for sale or sell any of their products in the City.

**Lodging, tenement and apartment houses.**

(26) To regulate lodging, tenement and apartment houses and to prevent the overcrowding of the same and to require that they be put and kept in proper sanitary condition.

**Sewer connections.**

(27) To regulate the construction, repair and use of

sewers, sinks, gutters, wells, cesspools, and vaults, and to compel the connecting, cleaning, or emptying of the same, and to designate the time and manner in which the work shall be done.

### **Garbage.**

(28) To provide for the collection and disposal of garbage, ashes, animal and vegetable refuse, dead animals, animal offal, rubbish and waste matter.

### **Licensing business.**

(29) To license for purpose of regulation and revenue all and every kind of business not prohibited by law to be transacted or carried on in the City; to fix the rates of licenses upon the same, and to provide for the collection thereof by suit or otherwise.

### **Regulation of public vehicles.**

(30) To establish stands for hacks, public carriages, express wagons, and other public vehicles for hire, and regulate the charges of such hacks, public carriages, express wagons and other public vehicles, and to require schedules of such charges to be posted in or upon such public vehicle.

### **Weights and measures.**

(31) To provide for the inspection and sealing of all weights and measures used in the City, and enforce the keeping and use by dealers of proper weights and measures duly tested and sealed.

### **Public shows. Gambling.**

(32) To license, regulate, restrain or prohibit all exhibitions, public shows, games and amusements; to prevent and prohibit all descriptions of gambling and fraudulent devices and practices, all playing of cards, dice or other games of chance for the purpose of gambling, the keeping or operating of card machines, slot machines or other contrivances upon or into which money is staked, hazarded, deposited or paid upon chance and the selling of pools on races, and to authorize the destruction of all instruments used for the purpose of gambling.

**Public order and decency.**

(33) To restrain and punish vagrants, mendicants, lewd persons and prostitutes; to prevent and punish drunkenness, prize fights and all offensive, immoral, indecent and disorderly conduct and practices in the City.

**Taxation.**

(34) To levy and collect taxes upon all real and personal property within the City, subject to the limitations elsewhere in this Charter provided.

**Erroneously collected taxes.**

(35) To order the repaying by the Treasurer of any taxes, percentages or costs erroneously or illegally collected.

**Fees.**

(36) To fix the fees and charges for all official services not otherwise provided for in this Charter.

**Mayor's urgency fund.**

(37) To provide an urgent necessity funds not exceeding five hundred dollars a year, to be expended under the direction of the Mayor.

**Lease of lands owned by the City.**

(38) To provide for the lease of any lands now or hereafter owned by the City, but all leases shall be made at public auction to the highest responsible bidder at the highest monthly rent, after publication of notice thereof for at least one week, stating explicitly the time and conditions of the proposed lease; provided, that the Council may in its discretion reject any or all bids.

**Purchase of property under execution.**

(39) To provide for the purchase of property levied upon or under execution in favor of the City, but the amount bid on such purchase shall not exceed the amount of judgment and costs.

**Sale of useless personal property.**

(40) To provide for the sale at public auction, after



advertising for five days, of personal property unfit or unnecessary for the use of the City.

### **Trusts.**

(41) To provide for the execution of all trusts confided to the City.

### **Street grades.**

(42) To establish or change the grade of any street or public place.

### **Street work.**

(43) To order the whole or any part of any street, avenue, lane, alley, court or place within the City of Berkeley to be graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or re-macadamized, graveled or re-graveled, piled or re-piled, capped or re-capped, sewerred or re-sewerred, and to order sidewalks, manholes, culverts, cesspools, gutters, tunnels, curbing and crosswalks to be constructed therein, and to order breakwaters, levees or walls of rock or other material to protect the same and also any other work or improvement therein; to provide for the care of shade trees planted therein and to cause shade trees to be planted, set out and cultivated therein; and also to order drainage or sanitary sewers or storm water sewers to be constructed on or through private property.

Whenever, in the judgment of the Council or of the people, the cost and expense of any of the foregoing improvements is to be paid by special assessments on private property, the general laws of the State of California in force at the time of the improvement shall govern and control, and all proceedings shall be in conformity thereto.

### **Street Openings.**

(44) To order the opening, extending, widening, straightening or closing of any street, lane, alley, court or public place within the City or over tide lands and lands covered by the waters of San Francisco Bay within the City, and to condemn and acquire any and all property necessary and convenient for that purpose.

Whenever, in the judgment of the Council or of the people, the cost and expense of any of the foregoing improvements is to be paid by special assessment on private property, the general laws of the State of California in force at the time of the improvement shall govern and control and all proceedings shall be in conformity thereto, except that all the duties of the commissioners shall be performed by the Commissioner of Public Works, and all clerical work shall be performed by the Superintendent of Streets, who shall receive no compensation therefor other than the salaries of their respective offices.

As amended in 1913. (Statutes 1913, Chap. 6, p. 1502.)

#### **Light and water.**

(45) To provide for the lighting of the streets, highways, public places, and public buildings and for supplying the City with water for municipal purposes.

#### **Boulevards.**

(46) To set apart as a boulevard or boulevards any street or streets over which there is no existing franchise for any railroad and to regulate and prevent heavy teaming thereon; and when any such street shall have been set aside as a boulevard, no franchise for a railroad, interurban railway or street railway of any kind shall be granted upon such boulevard and no railroad track of any kind shall ever be laid thereon, unless an ordinance to that effect shall have been duly passed by popular vote, as provided in Articles XIII and XIV.

#### **Closed or abandoned streets.**

(47) Whenever any street or portion of a street shall be abandoned or closed by ordinance, to convey by deed such street or portion of street so abandoned or closed, to the owners of the lands adjacent thereto in such wise as the Council shall deem that equity requires.

#### **Waterfront and wharves.**

(48) To improve, keep in repair and control the waterfront of the City, to fix the rates of wharfage, dockage, and tolls, and provide for the collection thereof, to license,

regulate and control the landing, anchorage and moorage of steamboats, sailing vessels, rafts, tug boats and all other watercraft within the jurisdiction of the City.

#### **Regulation of public utility rates.**

(49) To fix and determine by ordinance in the month of February of each year, to take effect on the first day of July thereafter, the rates or compensation to be collected by any person, firm or corporation in the City, for the use of water, heat, light, power or telephone service, supplied to the City or to the inhabitants thereof, and to prescribe the quality of the service.

#### **Regulation of street railroads.**

(50) To regulate street railroads, their tracks and cars, to compel the owners of two or more such street railroads using the same street for any distance not exceeding ten blocks, to use the same tracks and to equitably divide the cost of construction and the cost of maintenance thereof between them.

#### **Railroads to keep streets in repair.**

(51) To require every railroad company to keep the streets in repair between the tracks, and along and within the distance of two feet upon each side of the tracks, occupied by the company.

#### **Spur tracks.**

(52) To permit the laying down of spur or side tracks and running cars thereon, for the purpose of connecting warehouses, manufactories or other business industries and enterprises with any line of railroads that may be built along the water front or with any other lines of railroad which do now or may hereafter enter the City, subject to such regulations and conditions as may be prescribed from time to time by the Council, such tracks to be used for the transportation of freight only, and not to be used as a main line or a part thereof; and also for the purpose of excavating and filling in a street or portion of a street or the adjoining land, and for such limited time as may be necessary for such purpose and no longer.

Such tracks must be laid level with the street and must be operated under such restrictions as not to interfere with the use of the streets by the public. All permits granted under the provisions hereof shall be revocable at the pleasure of the Council.

#### **Regulation of poles and wires.**

(53) To cause the removal and placing underground of all telephone, telegraph, electric light or other wires within the City, or within any designated portion thereof, and to regulate or prohibit the placing of poles and suspending of wires along or across any of the streets, highways and public places in the City.

#### **Size and location of pipes.**

(54) To regulate the size and location of all water pipes, gas pipes, and all other pipes and conduits laid or constructed in the streets and public places, and to require the filing of charts and maps of such pipes and conduits.

#### **Elections.**

(55) To make all rules and regulations governing elections not inconsistent with this Charter.

#### **Civil Service Commission.**

(56) To establish a bureau of Civil Service and to appoint a commission, to serve without compensation, to administer the same under rules and regulations to be made by the Council. Such commission shall, among other things, provide for the classification of all employments in the administrative service of the City not excepted by the provisions of this Charter, by the Council or by the people, for open, competitive and free examinations as to fitness, for an eligible list from which vacancies shall be filled, for a period of probation before employment is made permanent, and for promotion on the basis of merit, experience and record.

#### **Civic Art Commission.**

(57) To establish a Civic Art Commission and to appoint Commissioners thereon, to serve without compen-

sation, with such powers and duties as may be fixed by the Council.

### **Park Commission.**

(58) To establish a Park Commission, and to appoint Commissioners thereon, to serve without compensation, with such powers and duties as may be fixed by the Council.

### **Playground Commission.**

(59) To establish a Playground Commission and to appoint Commissioners thereon, to serve without compensation, with such powers and duties as may be fixed by the Council.

### **Commission of Public Charities.**

(60) To establish a Commission of Public Charities and to appoint Commissioners thereon, to serve without compensation, with such powers and duties as may be fixed by the Council.

### **Municipal ownership.**

(61) To provide a suitable procedure for taking over or otherwise acquiring municipal ownership of public utilities.

### **Additional powers.**

(62) To enact appropriate legislation and do and perform any and all other acts and things which may be necessary and proper to carry out the general powers of the City or any of the provisions of this Charter, and to exercise all powers not in conflict with the Constitution of the State, with this Charter or with ordinances adopted by the people of the City .

## **ARTICLE X.**

### **FINANCE AND TAXATION**

#### **The fiscal year.**

Sec. 50. The fiscal year of the City shall commence upon the first day of July of each year, or at such other time as may be fixed by ordinance.



**Tax System.**

Sec. 51. The Council shall by ordinance provide a system for the assessment, levy and collection of all City taxes not inconsistent with the provisions of this Charter.

The Council shall have power to avail itself by ordinance of any law of the State of California now or hereafter in force and comply with the requirements thereof whereby assessments may be made by the Assessor of the County in which the City of Berkeley is situated and taxes collected by the Tax Collector of said County for and on behalf of the City of Berkeley. Other provisions of this charter concerning the assessment, levy and collection of taxes shall be subject to the provisions of any such ordinance while the same shall be in force.

**Department estimates of annual requirements.**

Sec. 52. On or before the first Monday in April in each year or on such date in each year as shall be fixed by the Council, the heads of departments, offices, boards and commissions shall send to the Commissioner of Finance and Revenue a careful estimate in writing of the amounts specifying in detail the objects thereof, required for the business and proper conduct of their respective departments, offices, boards and commissions, during the next ensuing fiscal year.

**Annual estimate of City's requirements and revenue.**

Sec. 53. On or before the first Monday in May in each year, or on such date in each year as shall be fixed by the Council, the Commissioner of Finance and Revenue shall submit to the Council an estimate of the probable expenditures of the City government for the next ensuing fiscal year, stating the amount required to meet the interest and sinking funds for the outstanding funded indebtedness of the City, and the wants of all the departments of the municipal government in detail, and showing specifically the amount necessary to be provided for each fund and department; also an estimate of the amount of income from fines, licenses and other sources of revenue exclusive

of taxes upon property, and the probable amount required to be levied and raised by taxation.

### **Annual Budget.**

Sec. 54. The Council shall meet annually prior to fixing the tax levy and make a budget of the estimated amounts required to pay the expenses of conducting the business of the City government for the next ensuing fiscal year. The budget shall be prepared in such detail as to the aggregate sum and the items thereof allowed to each department, office board or commission as the Council may deem advisable.

### **Board of Equalization.**

Sec. 55. The Council shall meet at their usual place of holding meetings on the first Monday in August of each year, at ten o'clock in the forenoon of said day, and sit as a Board of Equalization, and shall continue in session from day to day until the last Monday in August. They shall have power to hear complaints and to correct, modify, strike out or to raise any assessment, provided that notice shall be given to the party whose assessment is to be raised.

### **Annual tax levy.**

Sec. 56. The Council must finally adopt, not later than the first Tuesday in September, an ordinance levying upon the assessed valuation of the property in the City, subject to the provisions of this Charter, a rate of taxation upon each hundred dollars of valuation sufficient to raise the amounts estimated to be required in the annual budget, less the amount estimated to be received from fines, licenses and other sources of revenue. They shall then deliver the assessment roll to the Auditor, who shall compute and carry out the amount of the tax so levied upon each parcel of property contained in said assessment roll. The corrected list for each tax shall be the assessment roll of said tax for said year, and it shall be certified by the Auditor as being the assessment roll of said tax.

**Limit of tax levy.**

Sec. 57. The tax levy authorized by the Council to meet the municipal expenses for each fiscal year shall not exceed, except as herein provided, the rate of one dollar on each one hundred dollars of the assessed value of all real and personal property within the City. The Council, if requested by the Board of Education, shall in addition to the tax for municipal purposes, levy a tax for the adequate support of the public schools, such levy not to exceed thirty-five cents on each one hundred dollars of the assessed value of all real and personal property within the City.

As amended in 1913. (Statutes 1913, Chap. 6, p. 1502.)

**Bond tax. Library tax.**

Sec. 58. The Council shall have power to levy and collect taxes in addition to the taxes herein authorized to be levied and collected, sufficient to pay the interest and maintain a sinking fund of the bonded indebtedness of the City and to provide for the establishment and support of free public libraries and reading rooms.

**Cash Basis Fund.**

Sec. 59. The Council shall create and maintain a permanent revolving fund, to be known as the Cash Basis Fund, for the purpose of putting the payment of the running expenses of the City on a cash basis. For this purpose the Council shall provide that, from the money collected from the annual tax levy and from money received from other sources, a sum equal to not less than two and one-half cents on each one hundred dollars of the assessed value of said property shall be placed in such fund until the accumulated amount in such fund shall be sufficient to meet all legal demands against the treasury for the first four months or other necessary period of the succeeding fiscal year.

The Council shall have power to transfer from the Cash Basis Fund to any other fund or funds such sum or sums as may be required for the purpose of placing such fund or funds, as nearly as possible, on a cash basis. It shall

be the duty of the Council to provide that all money so transferred from the Cash Basis Fund be returned thereto before the end of the fiscal year.

### **Tax liens.**

Sec. 60. All taxes assessed, together with any percentage imposed for delinquency and the cost of collection, shall constitute liens on the property assessed; every tax upon the personal property shall be a lien upon the real property of the owner thereof. The liens provided for in this section shall attach as of the first Monday in March of each year, and may be enforced by actions in any court of competent jurisdiction to foreclose such liens, or by a sale of the property affected and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance; provided, that when real estate is offered for sale for City taxes due thereon, the same shall be struck off and sold to the City, in like case and in like manner and with like effect and with like right of redemption, as it may be struck off and sold to the State when offered for sale for State and County taxes; and the Council shall have power to provide for the procedure to be followed in such sales to the City and redemption thereafter.

### **Duties of the Auditor.**

Sec. 61. Money shall be drawn from the treasury only upon warrants as herein authorized. Every demand against the City from whatever source, including the School Department and the Free Public Library, when allowed by the Council or proper board, shall be signed by the President and Secretary or Clerk of such body, and a warrant, numbered and dated the same as the demand issued and signed by the same officers, and both must, before it can be paid, be presented to the Auditor, who shall satisfy himself whether the money is legally due and its payment authorized by law. If he allows it, he shall endorse upon the warrant the word "Allowed," and the date of such allowance, and sign his name thereto. No demand shall be approved, allowed, audited or paid

unless it specify each special item, and the date thereof. It shall be the duty of the Auditor to be constantly acquainted with the exact condition of the treasury. He shall, on application of any person indebted to the City, holding money payable into the City Treasury or desiring to pay money therein, certify to the Treasurer the amount thereof, to what fund applicable, and by whom to be paid. He shall charge the Treasurer with the amount received. It shall be his duty to apportion among the several funds all public money at any time in the City Treasury, not by law or ordinance specifically apportioned and appropriated, and forthwith notify the Treasurer of such apportionment or appropriation. He shall countersign and deliver to the proper officers, all licenses and other receipts, charging them therewith, and taking their receipt therefor. He shall on the first Monday of each month, or oftener if required, report in writing to the Council the condition of each fund in the Treasury. He shall keep a complete set of books for the City, in which he shall set forth in a plain and businesslike manner, every money transaction of the City, so that he can at any time tell the exact condition of the City's finances, and draw all warrants on the treasury. He shall perform such other duties as may be required of him by this Charter or by ordinance.

#### **Money to meet warrants.**

Sec. 62. When the running expenses of the City have been placed on a cash basis, warrants payable on demand shall be drawn upon the Treasurer, or against any funds in his hands, only when at the time of the drawing and issuing of such warrants there shall be sufficient money in the appropriate fund in the treasury to pay said warrants.

#### **Disposition of money collected.**

Sec. 63. Every officer collecting or receiving any moneys belonging to or for the use of the City shall settle for the same with the Auditor on or before the last day of each month, or at more frequent intervals as may be directed by the Council, and immediately pay all the same into the



treasury, on the order of the Auditor, for the benefit of the funds to which such moneys severally belong. When the last day of the month falls upon Sunday or a legal holiday, the said payments shall be made on the next preceding business day. The Council may provide, in its discretion, for the deposit of the City moneys in banks in accordance with the State law.

### **Uniform accounts and reports.**

Sec. 64. The Council shall prescribe uniform forms of accounts, which shall be observed by all officers and departments of the City which receive or disburse moneys. Whenever an act shall be passed by the State Legislature calling for uniform municipal reports, the City authorities shall be governed thereby.

## **ARTICLE XI.**

### **PUBLIC WORKS AND SUPPLIES**

#### **Form of contracts.**

Sec. 65. All contracts shall be drawn under the supervision of the City Attorney. All contracts must be in writing, executed in the name of the City of Berkeley by an officer or officers authorized to sign the same, and must be countersigned by the Auditor, who shall number and register the same in a book kept for that purpose.

#### **Progressive payments on contracts.**

Sec. 66. Any contract may provide for progressive payments, if in the ordinance authorizing or ordering the work permission is given for such a contract. But no progressive payments can be provided for or made at any time which, with prior payments, if there have been such, shall exceed in amount at that time seventy-five per cent of the value of the labor done and the materials used up to that time, and no contract shall provide for or authorize or permit the payment of more than seventy-five per cent of the contract price before the completion of the work done under said contract and the acceptance thereof by the proper officer, department or board.

**Public work to be done by contract.**

Sec. 67. In the erection, improvement and repair of all public buildings and works, in all street and sewer work, and in all work in or about streams, bays or water front, or in or about embankments or other works for protection against overflow and erosion, and in furnishing any supplies and materials for the same, or for any other use by the City, when the expenditure required for the same exceeds the sum of five hundred dollars, the same shall be done by contract, and shall be let to the lowest responsible bidder, after advertising for sealed proposals for the work contemplated for five consecutive days in the official newspaper. Such notice shall distinctly and specifically state the work contemplated to be done. Provided, however, the Council may reject any and all bids, if deemed excessive, and readvertise for bids, or provide for the work to be done by the Department of Public Works. In case no bid is received, the Council may likewise provide for the work to be done by the Department of Public Works.

**Contracts for official advertising.**

Sec. 68. The Council shall let annually contracts for the official advertising for the ensuing fiscal year. For this purpose the Council shall advertise for five consecutive days, setting forth distinctly and specifically the work contemplated to be done, and asking for sealed proposals therefor. The proposals shall specify the type and spacing to be used at the rate or rates named in the bids. The Council shall let the contracts for such official advertising to the lowest responsible bidder publishing a daily newspaper in the city which is a newspaper of general circulation and has been in existence at the time of the awarding of the contract at least one year; provided, that the Council may reject any or all bids if found excessive, and advertise for new bids.

The newspaper to which the award of such advertising is made shall be known and designated as the "official newspaper."

**Contracts for lighting.**

Sec. 69. No contract for lighting streets, public buildings, places or offices shall be made for a longer period than one year, nor shall any contract to pay for electric light or any illumination material at a higher rate than the minimum price charged to any other consumer be valid.

**Contracts for water.**

Sec. 70. No contract for supplying water for the use of the municipality in any of its departments shall be valid wherein the rates exceed those charged to other consumers.

**Hours of labor.**

Sec. 71. The maximum time of labor or service required of any laborer, workman or mechanic employed upon any municipal work, whether so employed directly by the City and its officers, or by a contractor or sub-contractor, shall be eight hours during any one calendar day.

**Collusion with bidder.**

Sec. 72. Any officer of the City, or of any department thereof, who shall aid or assist a bidder in securing a contract to furnish labor, material or supplies at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information or who shall wilfully mislead any bidder in regard to the character of the material or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to those called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies than has been actually received, shall be deemed guilty of a malfeasance and shall be removed from office.

**Collusion by bidder.**

Sec. 73. If at any time it shall be found that the person to whom a contract has been awarded, has, in presenting any bid or bids, colluded with any other party or parties for the purpose of preventing any other bid being made, then the contract so awarded shall be null and void, and

the Council shall advertise for a new contract for said work or provide for such public work to be done by the Department of Public Works.

## ARTICLE XII.

### FRANCHISES

#### **Property rights of the City inalienable.**

Sec. 74. The rights of the City in and to its water front, wharf property, land under water, public landings, wharves, docks, streets, highways, parks and all other public places, except as otherwise provided in this Charter, are hereby declared inalienable.

#### **No use of streets without a franchise.**

Sec. 75. No person, firm or corporation shall ever exercise any franchise or privilege mentioned in this article except in so far as he or it may be entitled to do so by direct authority of the Constitution of California or of the Constitution or laws of the United States, in, upon, over, under and along any street, highway or other public place in the city unless he or it shall have obtained a grant therefor in accordance with the provisions of this article of this Charter.

#### **Franchises to use streets.**

Sec. 76. Every franchise or privilege to construct or operate street, suburban, or interurban railroads along, upon, over or under any street, highway, or other public place or to lay pipes or conduits or to erect poles or wires or other structures in, upon, over, under or along any street, highway or other public place in the City for the transmission of gas or electricity, or for any purpose whatever, shall be granted upon the conditions in this article provided, and not otherwise.

#### **Applications for franchises.**

Sec. 77. (1) An applicant for a franchise or privilege shall file with the Council an application therefor, and thereupon the Council shall, if it propose to grant the same, advertise the facts of said application, together with

a statement that it is proposed to grant the same, in the official newspaper of the City. The publication of such advertisement must run for ten successive days and must be completed not less than twenty days and not more than thirty days before any further action can be taken on such application.

### **Conditions of grant.**

(2) The advertisement must state the character of the franchise, permit or privilege it is proposed to grant, and, if it be a street or suburban or interurban railroad, the route to be traversed; that sealed bids therefor will be opened at a stated time and place, and that the franchise, permit or privilege will be awarded to the bidder offering to pay to the City during the life of the franchise, permit or privilege, the highest percentage of the net annual revenue received from the use, operation or possession of the franchise, permit or privilege, provided that such net annual revenue shall be determined by deducting from the gross annual revenue collected from any and all sources, under and by virtue of such franchise, permit or privilege, all operating and maintenance costs, taxes, insurance, depreciation as fixed by the Board of Control and six (6) per cent interest on the valuation of the property of the grantee used and useful or determined in the franchise ordinance to be of prospective usefulness in the public service. Such valuation to be fixed by the Railroad Commission of the State of California or its successors in interest, and determined as provided in Section eighty-two (82) of this Charter; and provided further that the said percentage of the net annual revenue to be paid to the City shall not be less than fifty-five (55) per cent; and provided further that the Council shall have the right to reject any and all bids.

(3) At the time of opening the sealed bids, any responsible person, firm or corporation may bid for such franchise, permit or privilege not less than one-half ( $\frac{1}{2}$ ) of one (1) per cent of the net annual revenue for the entire term of the franchise, permit or privilege above the high-



est sealed bid therefor, and such bids so made may be raised not less than one-half ( $\frac{1}{2}$ ) of one (1) per cent of said net annual revenue for such entire term, by any other responsible bidder, and such bidding may continue until finally such franchise, permit or privilege shall be struck off, sold and awarded by the Council to the person, firm or corporation offering the highest percentage of the said net annual revenue arising from the use, operation or possession of said franchise, permit or privilege subject to the provisions of Subdivision 2 of this Section; provided, that if in the judgment of the Council no adequate or responsible bid has been made, the Council may withdraw such franchise, permit or privilege from sale or advertise for new bids.

If the franchise, permit or privilege is for a street or suburban or interurban railroad, which shall extend beyond the limits of the City of Berkeley, then and in that case the percentage of the net annual revenue above specified shall be computed or reckoned as follows: The total length of the said railroad within and without the City, shall be compared with the length of said railroad within the City, for which a franchise, permit or privilege is bid, and such fraction of the net revenue for the whole of the said railroad, within and without the City, as the portion of such railroad within the City is of the said whole railroad shall be deemed and considered the net annual revenue upon which the above percentage to be paid into the City Treasury shall be reckoned. No street or suburban or interurban or commercial railroad shall, without permission from the City of Berkeley granted by ordinance so to do, use the tracks of any other street or suburban or interurban or commercial railroad within the City of Berkeley.

As amended in 1917. (Statutes 1917, Chap. 17, p. 1814.)

#### **Deposit as guarantee of good faith.**

(4) Every application and bid for franchise under this article shall be accompanied by a cash deposit of two thousand dollars or a certified check therefor, as a guar-

antee of the good faith of the applicant or bidder, and as a fund out of which to pay all expenses connected with such application and the granting of such franchise.

Upon the franchise being awarded, all deposits made by unsuccessful bidders shall be returned. The deposit of the successful bidder shall be retained until the filing and approval of the surety bond hereinafter provided for, whereupon the remainder of such deposit, after the payment therefrom of all expenses incurred by the City in connection with the advertising and awarding of such franchise, shall be returned.

#### **Free competition in bidding.**

(5) No clause or condition of any kind shall be inserted in any franchise or grant offered or sold under the terms of this article which shall directly or indirectly restrict free and open competition in bidding therefor, and no clause or provision shall be inserted in any franchise offered for sale which shall in any wise favor one person, firm or corporation as against another in bidding for the purchase thereof.

#### **Bond.**

(6) The successful bidder for any franchise or privilege awarded under this article shall file a bond running to the City to be approved by the Council, in the penal sum by it to be prescribed and set forth in the advertisement for bids, conditioned that such bidder shall well and truly observe and faithfully perform each and every term and condition of such franchise, and that in case of any breach of conditions of such bond, the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and surety upon such bond.

Such bond shall be filed with the Council within five days after such franchise is awarded, and within thirty days after the filing and approval of such bond such franchise shall by the Council be granted by ordinance to the person, firm or corporation to whom it shall have been struck off, sold, or awarded, and in case such bond shall

not be so filed, the award of such franchise shall be set aside and any money deposited in connection with the awarding of the franchise shall be forfeited and the franchise shall, in the discretion of the Council, be readvertised and again offered for sale in the same manner and under the same restrictions as hereinbefore provided.

### **Re-settlement franchises.**

Sec. 77½. The Council is hereby empowered to provide for a general re-settlement of the franchise rights of and to grant a re-settlement franchise to any person, firm or corporation actually engaged in operating a public utility, or utilities in the City of Berkeley at the time this amendment becomes effective, upon written application therefor and upon the following terms and conditions, and not otherwise:

### **Advisory Board.**

(1) Whenever such written application, as above provided for, shall have been made, the Mayor thereupon shall appoint an Advisory Board to consist of seven (7) citizens, who shall co-operate with the Council in preparing such re-settlement franchise; and said written application for a re-settlement franchise shall thereupon be referred to said Advisory Board, which shall make within a reasonable time a written report thereon to the Council; and without such report said Council shall have no power to pass such re-settlement franchise. The said citizens shall serve without pay, but all reasonable expense incurred by them in the work of preparing said re-settlement franchise shall be paid by the City upon the presentation of a proper bill, in the same manner as any other proper claim against the City.

### **Time period of franchise.**

(2) Every such re-settlement franchise, permit or privilege shall be granted for an indeterminate period subject always to the right of the City to acquire and possess the property of the grantee or to assign its rights to purchase and possess to a third person, firm or corporation, as herein provided.

### **Division of annual net revenue.**

(3) Every such re-settlement franchise, permit or privilege shall confer upon the grantee thereof the right to occupy the streets and public places of the City particularly set out in the terms and conditions of said franchise, permit or privilege, subject always to the right of the City to acquire and possess the property of said grantee, or to assign its right to purchase and possess to a third person, firm or corporation, as provided in this Article; provided, however, that said grantee shall pay the City such a percentage of the net revenue annually collected from any and all sources under and by virtue of such franchise, permit or privilege, which percentage shall not be less than fifty-five (55) per cent of such annual net revenue, and provided further, that such annual net revenue shall be determined by deducting from the annual gross revenue all operating and maintenance costs, taxes, insurance, depreciation as fixed by the Board of Control and six (6) per cent interest on the valuation of the property used and useful or determined in the franchise ordinance to be of prospective usefulness in the public service. Such valuation to be fixed by the Railroad Commission of the State of California, or its successors in interest, and determined as provided in Section Eighty-two (82) of this Charter.

### **Passage and approval of franchise.**

(4) Every such re-settlement franchise shall be introduced in the Council in the form of an ordinance, at least ten days prior to being passed to print, and shall remain before the Council at least twenty (20) days after printing before final passage. After the final passage of said ordinance the same shall be referred and submitted to the vote of the electors of the City at the general or special election next ensuing not less than twenty (20) days after the final passage of such ordinance. But if no general or special election is to be held in the City within a period of not less than twenty (20) days and not more than ninety (90) days after such final passage, the Council shall call a Special Election for the purpose of submitting said ordi-

nance to the electors as aforesaid, said Special Election to be held not less than thirty (30) days and not more than sixty (60) days after such final passage.

No such re-settlement franchise ordinance shall go into effect until it shall have been so submitted to the electors of the City and received the approval of a majority of the electors voting thereon. Section 6; Subdivision 5 of Section 92; Subdivisions 13, 14, 15, 20 and 26 of Section 5 of this Charter, so far as applicable, shall govern elections held under the provisions of this section.

#### **Public Hearings by Council.**

(5) The Council shall hold public hearings on every proposed re-settlement franchise prior to its final passage, and not later than seven days after such final passage shall cause such re-settlement franchise to be printed in convenient pamphlet form for public distribution and shall publish daily thereafter up to the date of such election in the official newspaper of the City a notice to the effect that any person may procure a copy of such re-settlement franchise upon application therefor made in person or by mail to the City Clerk, provided that all costs of printing, publishing and advertising said franchise shall be borne by the grantee of said franchise.

#### **Additional powers.**

(6) In the passage of a re-settlement franchise, the Council shall have power to impose terms and conditions not inconsistent with this Charter, in addition to the terms and conditions provided for herein, and shall have such other powers hereunder as may be found necessary to the proper preparation, enactment, and the carrying out of the terms of a re-settlement franchise that provide, first, service of the highest efficiency to the public, second, sufficient new money to make extensions in the service of the public utility necessary in the proper development of the City, and third, the right of the City to convey to a third person, firm or corporation the City's privileges of purchasing the property of the grantee upon like terms and conditions as the City may so purchase.



**Amendments to re-settlement franchises.**

(7) Any re-settlement franchise may be amended from time to time by ordinance passed by the Council and ratified by the electors of the City in the manner herein prescribed for the passage of such re-settlement franchise in the first instance and not otherwise, provided that any such amendment shall not be effective unless accepted in writing by the grantee of such re-settlement franchise, and provided further that the Council in the preparation of such amendment may in its discretion act without the appointment of an advisory board, and that no such amendment shall in any respect contravene the provisions of this Section of this Charter.

**Joint Control.**

(8) Every re-settlement franchise shall provide for a Board of Control to consist of two competent and experienced men, one to be selected by the Council and one by the grantee of said franchise, all disagreements between the two to be decided by an arbiter appointed for that purpose in a manner to be determined in such franchise.

**Service.**

(9) Every re-settlement franchise shall provide for service of the highest efficiency, which shall be maintained during the life of the franchise.

**New franchises and extensions.**

(10) Every re-settlement franchise shall provide that any new franchise granted to the holder of such re-settlement franchise shall be considered as a part of such re-settlement franchise, and shall also provide that the Council may by ordinance grant to the grantee of such re-settlement franchise the right to extend the appliances and service of such grantee. All such extensions shall become a part of the aggregate property of such property of such grantee, and shall be subject to all the obligations and rights in favor of the City applicable to the property of the grantee by virtue of such re-settlement franchise. The right to use and maintain any such extension shall expire

with the original grant of such grantee by which the extensions are made.

**Consolidated or annexed territory.**

(11) Every re-settlement franchise shall provide that in case of consolidation with or annexation to the City of any territory not now included in said City, any franchise to operate such utility or any part thereof, held or claimed by the holder of such re-settlement franchise in or for any portion of such consolidated or annexed territory shall thereupon be surrendered to the City and that the rights and obligations of such re-settlement franchise shall thereupon automatically extend to such additional territory, and that a valuation of the properties used and useful, or in the discretion of the City prospectively useful in the operation of such utility in the area so consolidated or annexed and not included in the capital valuation already fixed in such re-settlement franchise shall be added to the capital account of said re-settlement franchise grantee at a valuation fixed by the Railroad Commission of the State of California, or its successors in interest, and otherwise determined as provided in Section Eighty-two (82) of this Charter.

**Provision for the surrender of existing franchises.**

(12) Every re-settlement franchise shall provide for the surrender by the grantee thereof of any or all of the franchises or rights owned or claimed by such grantee for the occupation of the streets or public places of said City at the time of such re-settlement, and the acceptance in lieu thereof of the rights and privileges granted by such re-settlement franchise as a franchise for the continued operation of such utility within the limits of the City or such portion thereof as had heretofore been operated under the franchise or franchises so surrendered, but not in contravention of any conditions of this Charter.

**Assumption of bonded indebtedness.**

(13) Every re-settlement franchise may provide that, when purchasing the property of the grantee, the City, if and when permitted by the provisions of the Constitution

of the State of California, may assume the obligations of such grantee for the payment of the bonds then outstanding against said property, not exceeding in aggregate par value the valuation of the property thus purchased, determined as in Section Eighty-two (82) of this Charter provided, and in such case the par value of such bonds shall be deducted from the said valuation of the property and the excess, if any, of the valuation of the property over the par value of the bonds so assumed shall be the purchase price to be paid to the grantee by the City for said property. After such purchase, the bonds so assumed shall no longer be a lien exclusively upon the franchise or property of the utility as such, but may be secured by the general credit of the City or by a lien upon a fixed percentage or amount of the gross earnings of such utility, or otherwise, as may be provided in such re-settlement franchise.

As amended in 1917. (Statutes 1917, Chap. 17, p. 1814.)

#### **Life of franchise.**

Sec. 78. Every franchise, permit or privilege shall be granted for an indeterminate period, subject always to the right of the City to acquire and possess the property of the grantee and to assign its right to acquire and possess to a third person, firm or corporation as in Section Eighty-two (82) hereof provided.

As amended in 1917. (Statutes 1917, Chap. 17, p. 1814.)

#### **Beginning and completion of work.**

Sec. 79. Work under any franchise granted in accordance with the terms of this article shall be commenced in good faith within not more than four months from the date of the final passage of the ordinance granting such franchise and if not so commenced within said time, said franchise shall be forfeited. Work under any franchise so granted shall be completed within the time fixed for such completion in the ordinance granting such franchise, which time shall not be more than three years from the date of the final passage of the ordinance granting said franchise, and if not so completed within said time, said franchise

shall be forfeited; provided, that if good cause be shown, the Council may by resolution extend the time for completion thereof not exceeding three months.

### **Service and accommodation.**

Sec. 80. The grant of every franchise or privilege shall be subject to the right of the City, whether reserved or not, to make all regulations which shall be necessary to secure in the most ample manner the safety, welfare and accommodations of the public, including among other things the right to pass and enforce ordinances to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant of the franchise and the right to make and enforce all of such regulations as shall be reasonably necessary to secure adequate, sufficient and proper service and accommodations for the people and insure their comfort and convenience.

### **Rates and charges.**

Sec. 81. The grant of every franchise or privilege shall be subject to the right of the City, whether reserved or not, to prescribe and regulate the rates, fares, rentals or charges made for the service rendered under such franchise. The grant of every franchise for a street, suburban or interurban railroad shall provide that all United States mail carriers and all officials, policemen and firemen of the City shall at all times, while in the actual discharge of their duties, be allowed to ride on the cars of such railroad within the boundaries of the City, without paying therefor and with all the rights of other passengers.

### **Right of City to assume ownership.**

Sec. 82. Every new franchise, permit or privilege and every re-settlement franchise, shall be granted upon the express condition that the City may, at a valuation fixed and determined, as hereinafter provided, either assume ownership by purchase and take over to itself the property used and useful or in the discretion of the City prospectively useful of the franchise grantee, his or its successors or assigns, or assign its right to acquire and possess said property to a third person, firm or corpora-

tion upon giving said grantee six months' written notice of its intention to so purchase and take over said property, which written notice shall be given only when authorized by ordinance. The valuation of such property, used and useful, or in the discretion of the City prospectively useful and owned by the grantee at the time application is made for said new franchise, permit or privilege, or for said re-settlement franchise, shall be fixed by the Railroad Commission of the State of California, or its successor in interest, and shall be set forth in said new franchise, permit or privilege, or in said re-settlement franchise, as the case may be. To this value shall be added the cost of all additions, extensions and betterments made with the approval of the Board of Control; and from this value shall be deducted the value of property sold or abandoned and the depreciation to be determined and fixed by the Board of Control in accordance with the provisions of the franchise and annually charged to the capital value of said property; and the valuation to which said additions have been made and from which such deductions have been made shall be the valuation upon which the six per cent interest referred to in subdivision three (3) of section seventy-seven and one-half ( $77\frac{1}{2}$ ), and in subdivision two (2) of section seventy-seven (77) shall be computed, and shall be the valuation at which said property may be acquired by the City, or by the third person, firm or corporation to which such right is assigned by the City.

As amended in 1917. (Statutes 1917, Chap. 17, p. 1814.)

#### **No conveyance necessary for City's ownership.**

Sec. 83. Every ordinance granting any franchise shall further provide that upon the payment by the City of a fair valuation in the manner provided in the ordinance, the plant and property of the grantee shall become the property of the City by virtue of the grant in payment thereunder, and without the execution of any instrument or conveyance. Or in case it is provided in the ordinance granting any franchise that the property and plant of the grantee shall, at the expiration of the period for which it



was granted, become the property of the City without any compensation to the grantee, the property and plant of the grantee shall then become the property of the City by virtue of the grant and without the execution of any instrument or conveyance.

### **Lease or assignment of franchise.**

Sec. 84. Any franchise granted by the City shall not be leased, assigned or otherwise alienated without the express consent of the City, and no dealings with a lessee or assignee on the part of the City to require the performance of any act or payment of any compensation by the lessee or assignee shall be deemed to operate as such consent; provided, that nothing herein shall be construed to prevent the grantees of such franchise from including it in a mortgage or trust deed executed for the purpose of obtaining money for corporate objects.

### **Street sprinkling, cleaning and paving.**

Sec. 85. Every grant of any franchise, permit or privilege, in, over, under or along any streets, highways, or public places in the City for railroad, street railway, suburban or interurban railway purposes, shall be subject to the conditions that the persons, firm or corporation exercising or enjoying the same shall sprinkle, plank or re-plank, pave or repave, macadamize or re-macadamize the entire length of the street, highway, or other public place used by the track or tracks of such railroad or railway, and between the rails, and for two feet on each side thereof, and between the tracks, if there be more than one, and keep the same constantly in repair, flush with the street, and with good crossings; and such street work shall be done with the kind of materials and in such manner as the Council may by ordinance direct, at the same time and as a part of the same operation as the work on the remainder in width of said street, highway or other public place, to the satisfaction of the Superintendent of Streets; provided, however, that when in the opinion of the Council the space between the rails and tracks of the grantee and two feet on each side thereof or any portion of the same is

not required for purposes other than railway traffic, the same need not be paved in like manner as the remainder of the street or public place, but shall be treated as the Council may direct.

As amended in 1917. (Statutes 1917, Chap. 17, p. 1814.)

#### **Examination of company's books. Audit.**

Sec. 86. The City of Berkeley, by its Auditor, Deputy Auditor, or accountants authorized by the Auditor, or by the Council shall have the right at all reasonable times to examine all the books, vouchers and records of any person, firm or corporation exercising or enjoying any franchise or privilege granted by the City for the purpose of verifying any of the statements of gross receipts provided for, and for any other purpose whatsoever connected with the duties or privileges of the City or of such person, firm or corporation arising from this Charter or from the ordinance granting the franchise, and may audit the same at the end of each year.

#### **Annual reports of company.**

Sec. 87. Every person, firm or corporation operating any business under a franchise granted under this article shall file annually with the City Auditor on such date as shall be fixed by the Council a report for the preceding year.

Such report shall be in writing, verified by the affidavit of such person or persons, or officer of the corporation, as the Council shall direct, and shall contain a statement, in such form and detail as shall from time to time be prescribed by the Council of all the gross receipts arising from all the business done by said person, firm or corporation within the City of Berkeley for the year immediately preceding such report. Such report shall contain such further statements as may be required by the Council concerning the character and amount of business done and the amount of receipts and expenses connected therewith, and also the amount expended for new construction, repairs and betterments during such year.

**Payment of gross receipts.**

Sec. 88. The stipulated percentage of net receipts provided in this Charter to be paid for the use and enjoyment of any franchise, permit or privilege shall be paid annually at the time of filing the annual report provided for in Section Eighty-seven (87) of this Charter to be filed by persons, firms or corporations holding franchises, permits or privileges. Failure to pay such percentage shall work a forfeiture of the franchise, permit or privilege.

As amended in 1917. (Statutes 1917, Chap. 17, p. 1814.)

**Forfeiture of non-compliance.**

Sec. 89. Every ordinance granting any franchise or privilege shall provide for the termination and forfeiture thereof for any breach or failure to comply with any of the terms, limitations or conditions thereof, and in all such cases the Council shall have power to declare the termination and forfeiture of any such franchise or privilege, the same as though in each instance such power was expressly reserved.

**Reservation for belt lines.**

Sec. 90. No exclusive right or privilege shall ever be granted by the City or Council in, to or upon the bed of the Bay of San Francisco beyond the line of mean low tide; nor shall any structure be erected thereon so as to prevent the construction and operation of belt lines of railroads along the waterfront; and any franchise or permit for a railroad track in, over or upon the bed of the Bay of San Francisco shall be subject to the right of any other railroad or railroad company to use the same upon the payment of a reasonable compensation therefor.

**Franchise not in use forfeited.**

Sec. 91. All franchise and privileges heretofore granted by the City which are not in actual use or enjoyment or which the grantees thereof have not in good faith commenced to exercise, shall be declared forfeited and invalid, unless such grantees or their assigns shall, within six months after this Charter takes effect, in good faith com-

mence the exercise and enjoyment of such privilege or franchise.

### ARTICLE XIII. THE INITIATIVE

#### **Direct legislation.**

Sec. 92. (1) Any proposed ordinance may be submitted to the Council by a petition signed by registered electors of the City equal in number to the percentage hereinafter required.

#### **Provisions of Section 5 apply.**

(2) The provisions of Section 5 of Article III respecting the forms and conditions of the petition and the mode of verification and certification and filing shall be substantially followed, with such modifications as the nature of the case requires.

#### **Fifteen per cent petition.**

(3) If the petition accompanying the proposed ordinance be signed by electors equal in number to fifteen per centum of the entire vote cast for all candidates for Mayor at the last preceding general municipal election at which a Mayor was elected, and contain a request that said ordinance be submitted forthwith to the vote of the people at a special election, then the Council shall either:

(a) Pass said ordinance without alteration within twenty days after the attachment of the Clerk's certificate of sufficiency to the accompanying petition (subject to a referendum vote, under the provisions of Article XIV of this Charter); or,

(b) Within twenty-five days after the Clerk shall have attached to the petition accompanying such ordinance his certificate of sufficiency, the Council shall proceed to call a special election at which said ordinance without alteration shall be submitted to a vote of the people.

#### **Five per cent petition.**

(4) If the petition be signed by electors equal in number to at least five, but less than fifteen, per centum of the entire vote cast for all candidates for Mayor at the last

preceding general municipal election at which a Mayor was elected, and said ordinance be not passed by the Council as provided in the preceding subdivision, then such ordinance, without alteration, shall be submitted by the Council to a vote of the people at the next general municipal election that shall occur at any time after twenty days from the date of the Clerk's certificate of sufficiency attached to the petition accompanying such ordinance.

### **Publication of Popular Ordinance.**

(5) Whenever any ordinance or proposition is required by this Charter to be submitted to the voters of the City at any election either (a) the Council shall cause the ordinance or proposition to be printed and it shall be the duty of the Clerk to enclose a printed copy thereof in an envelope with a sample ballot and mail the same to each voter, at least three days prior to the election, or (b) the Council may order such ordinance or proposition to be printed in the official newspaper of the City and published in like manner as ordinances adopted by the Council are required to be published and may order that such publication shall take the place of the printing and mailing of the ordinance or proposition and of the sample ballots as first above provided.

### **Election.**

(6) The ballots used when voting upon such proposed ordinance shall contain the words, "For the Ordinance" (setting forth in full the title thereof and stating the general nature of the proposed ordinance) and "Against the Ordinance," (setting forth in full the title thereof and stating the general nature of the proposed ordinance). If a majority of the qualified electors voting on said proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the City.

### **Several ordinances at one election.**

(7) Any number of proposed ordinances may be voted



upon at the same election, in accordance with the provisions of this article.

**Limit to special elections.**

(8) There shall not be held under this article of the Charter more than one special election in any period of six months.

**Repeal of popular ordinance.**

(9) The Council may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general municipal election; and should such proposition, so submitted, receive a majority of the votes cast thereon at such election, such ordinance shall be repealed or amended accordingly. An ordinance proposed by petition, or adopted by a vote of the people, cannot be repealed or amended except by a vote of the people.

**Further regulations.**

(10) The Council may, by ordinance, make such further regulations as may be necessary to carry out the provisions of this section, and to adapt the provisions of Section 5 of Article III thereto.

**ARTICLE XIV.****THE REFERENDUM****Mode of protesting against ordinances.**

Sec. 93. No ordinance passed by the Council shall go into effect before thirty days from the time of its final passage except when otherwise required by the general laws of the State or by the provisions of this Charter respecting street improvements, and except the ordinance making the annual tax levy, and except an ordinance for the immediate preservation of the public peace, health or safety, which contains a statement of its urgency, and is passed by a four-fifths vote of the Council; provided, that no grant of any franchise shall be construed to be an urgency measure, but all franchises shall be subject to the referendum vote herein provided. If during said thirty

days a petition signed by qualified electors of the City equal in number to at least ten per centum of the entire vote cast for all candidates for Mayor at the last preceding general municipal election at which a Mayor was elected, protesting against the passage of such ordinance, be presented to the Council, the same shall thereupon be suspended from going into operation and it shall be the duty of the Council to reconsider such ordinance, and if the same be not entirely repealed, the Council shall submit the ordinance, as is provided in Article XIII of this Charter, to the vote of the electors of the City, either at the next general municipal election or at a special election to be called for that purpose, and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. The provisions of Section 5 of Article III respecting the forms and conditions of the petition and the mode of verification and certification and filing shall be substantially followed, with such modifications as the nature of the case requires.

#### **Reference of measures to popular vote.**

Sec. 94. Any ordinance or measure that the Council or the qualified voters of the City shall have authority to enact, the Council may of its own motion submit to the electors for adoption or rejection at a general or special municipal election, in the same manner and with the same force and effect as is provided in this Charter for ordinances or measures submitted on petition. At any special election called under the provisions of this Charter, there shall be no bar to the submission of other questions to a vote of the electors in addition to the ordinances or measures herein provided for, if said other questions are such as may legally be submitted at such election. If the provisions of two or more measures approved or adopted at the same election conflict then the measure receiving the highest affirmative vote shall control.

#### **Further regulations.**

Sec. 95. The Council may, by ordinance, make such

further regulations as may be necessary to carry out the provisions of this article, and to adapt the provisions of Section 5 of Article III thereto.

## ARTICLE XV. THE PUBLIC SCHOOLS

### **The Board of Education.**

Sec. 96. The Board of Education shall have entire control and management of the public schools in the City in accordance with the Constitution and general laws of the State, and is hereby vested with all the powers and charged with all the duties provided by this Charter and by the general laws of the State for City Boards of Education.

### **President of the Board.**

Sec. 97. The Board of Education shall annually elect one of its own members to be President of the Board. He may be removed by the affirmative vote of four members. The President shall have no other vote than his vote as member of the Board.

### **Meetings.**

Sec. 98. The Board of Education shall meet at such times as may be designated by resolution of said Board and in the place provided therefor by the Council. The Board shall provide the manner in which special meetings shall be called.

### **Quorum.**

Sec. 99. Three members of the Board shall constitute a quorum, and the affirmative votes of three members shall be necessary to pass any measure, but a less number than three may adjourn from day to day and compel the attendance of absent members in such manner as the Board may prescribe.

### **Rules of proceedings.**

Sec. 100. The Board of Education may determine the rules of its proceedings.

**Meetings to be public.**

Sec. 101. All meetings of the Board of Education shall be public.

**Superintendent of Schools.**

Sec. 102. The Board of Education shall appoint a Superintendent of Schools and fix his compensation.

**Powers and duties of the Superintendent.**

Sec. 103. The Superintendent of Schools shall be the executive officer of the Board of Education and he shall give his full time to the duties of his office. He shall be subject only to the Board of Education and all orders of the Board relating to the direction of the principals, teachers, and janitors shall be given through him. He must examine all plans for the construction or reconstruction of school buildings and report in writing to the Board any objections he may find thereto. He shall have supervision of the course of instruction and of the discipline and conduct of the schools. He, or a Deputy Superintendent, may be required to act as Secretary of the Board of Education.

**Powers of Superintendent with reference to teachers.**

Sec. 104. The Superintendent of Schools shall nominate and recommend all teachers and principals for election by the Board of Education. He shall assign all teachers and principals and make all transfers necessary to the successful operation of the schools.

**Election of teachers.**

Sec. 105. The Board of Education shall elect all teachers, but only from a list of candidates nominated and recommended by the Superintendent of Schools. The Board of Education may make rules in accordance with which the Superintendent must make such nominations and recommendations.

**Tenure of teachers.**

Sec. 106. For the first two years of their service in the School Department of the City, teachers shall be subject to annual election. After two years' service they shall be elected for a term of three years.

**School warrants.**

Sec. 107. Every claim payable out of the School Fund shall be filed with the Secretary of the Board of Education, and after it shall have been approved by the Board a certificate of such approval shall be endorsed thereon, signed by the President and Secretary, and a warrant upon the School Fund shall be issued thereon for the payment of such claim. Said warrant shall be signed by the President and countersigned by the Secretary and shall specify the purpose for which it is drawn and receive the approval of the Auditor as provided in Section 61.

**Annual estimate of expenses.**

Sec. 108. The Board of Education shall annually, on such date as shall be fixed by the Council, submit in writing to the Council a careful estimate of the whole amount of money to be received from the State and County for the support of the public schools in the City, together with a careful estimate of the amounts, specifying in detail the objects thereof, required from the City for the adequate support of the public schools for the ensuing year. The amount estimated to be required from the City shall, subject to the provisions of this Charter, be assessed and collected in the annual tax levy. The proceeds of such tax shall be immediately paid into the School Fund of the City, to be drawn out only upon the order of the Board of Education.

**ARTICLE XVI.****MISCELLANEOUS****When this Charter takes effect.**

Sec. 109. For the purpose of nominating candidates and electing Mayor, Auditor, Councilmen and School Directors in accordance with this Charter, this Charter shall take effect from the time of the approval of the same by the Legislature; for all other purposes it shall take effect on the first day of July, 1909.



**First election under this Charter.**

Sec. 110. The Board of Trustees of the Town of Berkeley in office at the time this Charter is approved by the Legislature shall provide for the holding of the first election of officers under this Charter, shall canvass the votes, declare the result and approve the bonds of all officers elected at such elections.

**Terms of incumbents in office.**

Sec. 111. The members of the Board of Trustees, the Auditor, and the members of the Board of Education in office at the time of the approval of this Charter by the Legislature shall continue to hold office and discharge their duties until the election and qualification of the Mayor, Auditor, Councilmen and School Directors, respectively, first elected under this Charter.

The term of each of all the other officers in office at the time this Charter takes effect shall cease and terminate when the Council first elected hereunder shall by resolution so declare.

**Existing ordinances continued in force.**

Sec. 112. All lawful City ordinances, resolutions and regulations in force at the time this Charter takes effect and not inconsistent with the provisions thereof are hereby continued in force until the same shall be duly amended or repealed.

**Conduct of legal proceedings.**

Sec. 113. The City Attorney shall prosecute, in behalf of the people, all criminal cases arising from violations of the provisions of this Charter and the ordinances of the City, and shall attend to all suits and proceedings in which the City may be legally interested; provided, the Council shall have control of all litigation of the City and may employ other attorneys to take charge of any litigation or to assist the City Attorney therein.

**Violation of Charter and ordinances.**

Sec. 114. The violation of any provision of this Charter or of any ordinance of the City shall be deemed a misde-

meanor, and may be prosecuted by the authorities of the City in the name of the people of the State of California, or may be redressed by civil action, at the option of said authorities. Any person sentenced to imprisonment for the violation of a provision of this Charter or of an ordinance may be imprisoned in the City jail, or, if the Council by ordinance shall so prescribe, in the county jail of the county in which the City of Berkeley is situated, in which case the expense of such imprisonment shall be a charge in favor of such county against the City of Berkeley.

### **Municipal affairs.**

Sec. 115. The City of Berkeley shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter; provided, however, that nothing herein shall be construed to prevent or restrict the City from exercising or consenting to, and the City is hereby authorized to exercise, any and all rights, powers and privileges heretofore or hereafter granted or prescribed by general laws of the State.

As amended 1921. (Statutes 1921, Chap. 16.)

### **CERTIFICATE**

Whereas, The Town of Berkeley, a city containing a population of more than ten thousand and less than one hundred thousand inhabitants, on the twenty-first day of November, nineteen hundred and eight, at a special election, and under and in accordance with the provisions of section eight, article eleven of the Constitution of the State of California, did elect R. A. Berry, C. A. Blank, J. W. Flinn, F. W. Foss, John M. Foy, Beverly L. Hodghead, Christian Hoff, William Carey Jones, E. E. Newton, J. T. Renas, J. W. Richards, J. T. Short, J. L. Tisdale, Benjamin Ide Wheeler and S. N. Wyckoff a Board of Fifteen Freeholders to prepare and propose a Charter for said city;

BE IT KNOWN, That in pursuance of said provision of the Constitution and within a period of ninety days after

said election, said Board of Freeholders has prepared and does propose the foregoing as and for the Charter of the City of Berkeley, and that in submitting and proposing such Charter, the Board of Freeholders, pursuant to said provision of the Constitution, also presents therewith for the choice of the voters, and to be voted on separately, without prejudice to the other provisions contained in the Charter, an alternative proposition hereinafter stated.

Said alternative proposition shall, if approved by the voters, take the place of subdivision 29 of Section 49, Article IX of the proposed Charter, which reads as follows: "To license for purposes of regulation and revenue all and every kind of business not prohibited by law to be transacted or carried on in the City; to fix the rates of licenses upon the same, and to provide for the collection thereof by suit or otherwise."

Said alternative proposition shall be submitted to the voters for their approval or rejection at the same election at which the Charter shall be submitted, and upon the ballots shall be printed: "Shall the alternative proposition, prohibiting the sale of liquor, take the place of subdivision 29, Section 49, Article IX?"

Said alternative proposition is as follows:

#### ALTERNATIVE PROPOSITION

(29) To license for purposes of regulation and revenue all and every kind of business not prohibited by law to be transacted or carried on in the City; to fix the rates of licenses upon the same, and to provide for the collection thereof by suit or otherwise; provided, however, that the Council shall have no power to license the sale of any spirituous, malt, vinous or alcoholic liquors; and every person who, within the boundaries of the City of Berkeley, sells, barter, gives away or exposes for sale any such liquors, shall be deemed guilty of a misdemeanor. Nothing in this section shall prevent the Council from regulating the sale of such liquors by a regularly licensed druggist for medicinal purposes upon the written prescription of a practicing physician entitled to practice medicine

under the laws of the State of California, or the sale of such liquors for chemical, mechanical or scientific purposes.

IN WITNESS WHEREOF, we have hereunto set our hands in duplicate this fourteenth day of December, one thousand nine hundred and eight.

WM. CAREY JONES, President;  
 R. A. BERRY  
 C. A. BLANK  
 F. W. FOSS  
 JOHN M. FOY  
 BEVERLY L. HODGHEAD  
 C. HOFF  
 E. E. NEWTON  
 J. T. RENAS  
 J. W. RICHARDS  
 J. T. SHORT  
 J. L. TISDALE  
 BENJ. IDE WHEELER  
 S. N. WYCKOFF

Attest:

J. W. FLINN, Secretary.

State of California  
 County of Alameda, Town of Berkeley. } ss.

I, Francis Ferrier, President of the Board of Trustees of the Town of Berkeley, State of California, do hereby certify that the Board of Freeholders, whose names appear signed to the foregoing proposed Charter, were on the 21st day of November, 1908, at a special municipal election held in said town of Berkeley on said day, duly elected by the qualified electors of said town to prepare and propose a charter for said town; that each of said freeholders has been a qualified elector and freeholder in said town for more than five (5) years previous to said election; that the foregoing is a true copy of said Charter prepared and returned to me as President of said Board of Trustees within ninety (90) days after said election, as required by Section 8 of Article XI of the Constitution of this State;

that said proposed charter was then published in the "Berkeley Reporter" and in "The Berkeley Independent," which then were daily newspapers of general circulation in said town, and that publication was made for more than twenty (20) days, and that the first publication of said proposed Charter was made within twenty (20) days after the completion of said Charter; that within thirty (30) days after the publication of said Charter, as required in said Section 8, to-wit, on the 30th day of January, 1909, said Charter was submitted at a special election duly called and held therein for the purpose of ratifying or rejecting said proposed Charter and the alternative proposition submitted therewith; that by a majority of the votes of the qualified electors voting at said election said proposed Charter was ratified as a whole, excepting that the alternative proposition therein contained, being separately voted on, was ratified by a majority of such votes and was thereafter chosen and substituted for subdivision 29 of Section 49 of Article IX of said proposed Charter; that the returns of said election were duly canvassed by the Board of Trustees of said Town of Berkeley on the 3rd day of February, 1909, and the result thereof declared as above set forth; and that in all matters and things pertaining to said proposed Charter, all provisions of said section of the Constitution and laws of the State of California pertaining to the adoption of the Charter have been fully complied with in every particular.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the corporate seal of said Town of Berkeley to be affixed this 3d day of February, 1909.

FRANCIS FERRIER,

(Seal)

President of the Board of Trustees of  
the Town of Berkeley.

Attest: J. V. MENDENHALL,

Town Clerk of said Town of Berkeley.

CHAPTER 17. ASSEMBLY CONCURRENT RESOLUTION No. 10.  
Approving the Charter of the Town of Berkeley, State of California, and the alternative proposition submitted there-



with, voted for and ratified by the qualified electors of said town at a special municipal election held therein for the purpose on the 30th day of January, 1909.

Whereas, the Town of Berkeley, a municipal corporation of the County of Alameda, State of California, now is and was at all times herein referred to a city containing a population of more than ten thousand (10,000) inhabitants; and

Whereas, at a special election duly held in said town on the 21st day of November, 1908, under and in accordance with law and the provisions of Section 8 of Article XI, of the Constitution of the State of California, a Board of Fifteen Freeholders, duly qualified was elected in and by said Town by the qualified electors thereof to prepare and propose a charter for the government of said town; and

Whereas, said Board of Freeholders did within ninety (90) days after said election prepare and propose a Charter for the government of said Town of Berkeley; and

Whereas, said Charter was on the 14th day of December, 1908, signed in duplicate by the members of said Board of Freeholders and was thereupon duly returned and filed, one copy with the President of the Board of Trustees of said Town of Berkeley and the other copy with the County Recorder of said County of Alameda and filed in the office of said Recorder; and

Whereas, said proposed Charter was thereafter published in the "Berkeley Reporter" and in "The Berkeley Independent," each being a newspaper of general circulation in said Town of Berkeley, and said Charter being published as aforesaid for a period of more than twenty (20) days, the first publication thereof being made within twenty (20) days after the completion of said Charter; and

Whereas, said proposed Charter was within thirty (30) days after the completion of said publication submitted by the Board of Trustees of the Town of Berkeley to the qualified electors of said Town of Berkeley at a special election previously duly called and therein held on the 30th day of January, 1909; and

Whereas, at said last mentioned special election, a majority of said qualified electors of said Town of Berkeley, voting at said special election voted in favor of the ratification of said Charter as proposed as a whole, excepting that a majority of said qualified electors voting at said election voted in favor of the ratification of the alternative proposition, which alternative proposition was thereafter chosen and substituted for subdivision 29 of Section 49, Article IX of said proposed Charter; and

Whereas, said Board of Trustees after canvassing said returns found and decided that the majority of said qualified electors voting at said special election had voted for ratifying said Charter as above specified; and

Whereas, the same is now submitted to the Legislature of the State of California, for its approval and for ratification as a whole without power of alteration or amendment in accordance with Section 8 of Article XI of the Constitution of the State of California; and

Whereas, said Charter was ratified in the words and figures following, to-wit: (Then follows the context of Charter, as hereinbefore set forth).

And, whereas, said proposed Charter, with said alternative proposition so ratified, has been duly presented and submitted to the Legislature of the State of California, for approval or rejection, without power of alteration or amendment, in accordance with Section 8 of Article XI of the Constitution of the State of California;

Now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF CALIFORNIA, THE SENATE THEREOF CONCURRING (a majority of all members elected to each house voting for the adoption of this resolution and concurring therein) that said Charter of the Town of Berkeley, including said alternative proposition, as presented to, adopted and ratified by the qualified electors of said town,

be, and the same is hereby, approved as a whole as and for the Charter of the said Town of Berkeley.

P. A. STANTON,  
Speaker of the Assembly.

W. R. PORTER,  
President of the Senate.

Attest: C. F. CURRY,  
Secretary of State.

Endorsed and filed in the office of Secretary of State, the fourth day of March, A. D. 1909, at 10:50 a. m.

C. F. CURRY,  
Secretary of State.

J. HOESCH,  
Deputy.

State of California,  
County of Alameda, Town of Berkeley. } ss.

I, Francis Ferrier, President of the Board of Trustees, and chief executive officer of the Town of Berkeley, County of Alameda, State of California, hereby certify that the foregoing is what is proposed to be a copy of the Charter of the City of Berkeley which was delivered to me as stated in the preamble attached hereto, the same as required in Section 8 of Article XI of the Constitution of the State of California, that the statements contained in said preamble and in the certificate attached to and following said Charter are true; that the said Charter has been submitted to the electors of the Town of Berkeley and has been ratified by them and that said Charter has been approved by the Legislature of the State of California.

IN WITNESS WHEREOF, I have hereunto set my

hand and caused the corporate seal of said Town of Berkeley to be affixed this eleventh day of March, 1909.

FRANCIS FERRIER,  
President of the Board of Trustees of  
The Town of Berkeley.

Attest: J. V. MENDENHALL,  
Town Clerk of said Town of Berkeley.

(SEAL)

M 29247

BCT. Indexed

Recorded at the request of the Town of Berkeley at 35 minutes past two p. m., March 11, 1909, in liber 36, page 113, Miscellaneous Records of Alameda County.

A. K. GRIM,  
County Recorder.

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